S. HRG. 99-654

NOMINATIONS—MARCH–APRIL

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

MARCH 5, 1986

ALFRED CALVIN SIKES, TO BE ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION, DEPARTMENT OF COMMERCE

MARCH 7, 1986

PAUL H. LAMBOLEY AND J.J. SIMMONS, III, TO BE COMMISSIONERS, INTERSTATE COMMERCE COMMISSION AND JANET HALE, TO BE ASSISTANT SECRETARY OF TRANSPORTATION FOR BUDGET AND PROGRAMS, DEPARTMENT OF TRANSPORTATION

MARCH 24, 1986

JAMES BURNETT AND JOSEPH T. NALL, TO BE MEMBERS, NATIONAL TRANSPORTATION SAFETY BOARD AND ROBERT ORTNER, TO BE UNDER SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

APRIL 9, 1986

PATRICIA DIAZ DENNIS, TO BE A COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

60-129 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S261-37

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

JOHN C. DANFORTH, Missouri, *Chairman*

BOB PACKWOOD, Oregon	ERNEST F. HOLLINGS, South Carolina
BARRY GOLDWATER, Arizona	RUSSELL B. LONG, Louisiana
NANCY LANDON KASSEBAUM, Kansas	DANIEL K. INOUYE, Hawaii
LARRY PRESSLER, South Dakota	WENDELL H. FORD, Kentucky
SLADE GORTON, Washington	DONALD W. RIEGLE, JR., Michigan
TED STEVENS, Alaska	J. JAMES EXON, Nebraska
BOB KASTEN, Wisconsin	ALBERT GORE, JR., Tennessee
PAUL S. TRIBLE, JR., Virginia	JOHN D. ROCKEFELLER IV, West Virginia

W. ALLEN MOORE, *Chief Counsel and Staff Director*
RALPH B. EVERETT, *Minority Chief Counsel and Staff Director*

CONTENTS

LIST OF WITNESSES

MARCH 5, 1986

	Page
Opening statement by Senator Goldwater	1
Opening statement by the Chairman	1
Opening statement by Senator Hollings	2
Sikes, Alfred Calvin	4
Biographical sketch	3

MARCH 7, 1986

Opening statement by Senator Packwood	11
Simmons, J. J., III	15
Biographical sketch	15
Boren, Hon. David L., U.S. Senator from Oklahoma	13
Nickles, Hon. Don, U.S. Senator from Oklahoma, prepared statement	14
Johnston, Hon. J. Bennett, U.S. Senator from Louisiana, prepared statement	14
Prehearing questions of the minority and the answers	32
Posthearing questions of Senator Kassebaum and the answers	40
Lamboley, Paul H	16
Biographical sketch	15
Cannon, Hon. Howard, former U.S. Senator from Nevada	11
Hecht, Hon. Chic, U.S. Senator from Nevada	12
Laxalt, Hon. Paul, U.S. Senator from Nevada, prepared statement	12
Prehearing questions of the minority and the answers	29
Posthearing questions of Senator Kassebaum and the answers	37
Hale, Janet	26
Biographical sketch	26
Prepared statement	26
Prehearing questions of Senator Hollings and the answers	35

MARCH 24, 1986

Opening statement by Senator Kassebaum	47
Opening statement by Senator Hollings	58
Burnett, Jim	50
Biographical sketch	49
Pryor, Hon. David, U.S. Senator from Arkansas	47
Prehearing questions of the majority and the answers	65
Prehearing questions of the minority and the answers	72
Hammerschmidt, Hon. John Paul, U.S. Representative from Arkansas, letter	83
Nall, Joseph Trippe	60
Biographical sketch	59
Prepard statement	60
Prehearing questions of Senator Kassebaum and the answers	76
Prehearing questions of the minority and the answers	80
Nelson, Hon. Bill, U.S. Representative from Florida, letter	83
Whitley, Hon. Charles O., U.S. Representative from North Carolina, letter	84

MARCH 24, 1986

Opening statement by Senator Gorton 85
Ortner, Robert 88
Biographical sketch 87
Prehearing questions of Senator Gorton and the answers 100
Prehearing questions of Senator Hollings and the answers 101
Prehearing questions of Senator Ford and the answers 103
Courter, Hon. Jim, U.S. Representative from New Jersey, prepared statement 103

APRIL 9, 1986

Opening statement by Senator Gorton 105
Opening statement by Senator Goldwater 109
Dennis, Patricia Diaz 109
Biographical sketch 108
Bingaman, Hon. Jeff, U.S. Senator from New Mexico 105
Prepared statement 106
Wilson, Hon. Pete, U.S. Senator from California, prepared statement 106
Posthearing questions of Senator Goldwater and the answers 110
Posthearing questions of Senator Hollings and the answers 112

ALFRED CALVIN SIKES TO BE ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION, DEPARTMENT OF COMMERCE

WEDNESDAY, MARCH 5, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:03 a.m., in room SR-253, Russell Senate Office Building, Hon. Barry Goldwater presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member; Katherine Meier, staff counsel; and Thomas Cohen, minority staff counsel.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. The committee will come to order.

I am pleased to welcome you here this morning as the Subcommittee on Communications holds the nomination hearing on Mr. Alfred C. Sikes, President Reagan's choice to succeed David J. Markey as Assistant Secretary of Commerce for Communications and Information.

As many of you may be aware, I have in the past expressed concern over the submission of names for prospective nominees for jobs in the administration whom I did not feel were well suited to carry out the tasks that faced them. This morning we have before us a gentleman that gives every indication that he is particularly well qualified to carry out the duties of Assistant Secretary for Communications and Information at the Department of Commerce.

Mr. Sikes has long been involved in the broadcasting industry, having served as both an owner and operator of a number of radio stations in Missouri since 1977. Mr. Sikes also has had a good deal of State government experience, having served as assistant attorney general in Missouri for several years.

Having said that, let me ask Senator Danforth, from whose State Mr. Sikes calls home, if he has any words he would like to share with us.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Mr. Chairman, thank you very much. From time to time we have the privilege of introducing to a committee con-

stituents. Oftentimes we do not know those constituents very well, but we are still pleased to make the introduction.

In this case, I am here with great enthusiasm because I have known Al Sikes, and known him very well, for something like 18 years. He is a person who has demonstrated leadership ability and demonstrated ability in public service. When I first knew Al Sikes, he was the president of the Missouri Jaycees. When I was first elected as attorney general of Missouri and took office in January 1969, Al Sikes was one of four people who went into that office with me as an assistant attorney general.

In 1970, when I made the mistake of challenging Stuart Symington for the U.S. Senate, probably for the good of the country unsuccessfully, Al Sikes was the manager of my campaign. He returned after that campaign to the attorney general's office. In 1973, he joined the Governor's administration in our State as a member of the Governor's cabinet, and as director of the State department of consumer affairs, somewhat analgous to our FTC.

He left public service in the mid-1970's and went into the radio business in Springfield, MO, where he had lived before he moved to Jefferson City.

I know Al Sikes, as I say, Mr. Chairman, very well. I have been in his home, he has been in my home. We have gone fishing together, which is a great test of character. I believe I baptized one of his children, and I can without qualification vouch for his character, his integrity, and his ability.

Senator GOLDWATER. Thank you very much, Senator.

I will ask Senator Hollings if he has any comments he would like to make.

OPENING STATEMENT BY SENATOR HOLLINGS

Senator HOLLINGS. With that strong introduction, if I had any misgivings I would be afraid to express them, I can tell you that.

I welcome Mr. Sikes. You do have a most outstanding record, and we commend you on that and commend you on your continued interest and willingness to serve here in Washington. It is not easy, with a family and all, coming all the way out of Missouri here on an assignment of this kind, but we need important people. We need those with a broad background of experience in communications, and there is no question that you have an eminent record. We welcome you, and we are delighted to support your nomination.

Mr. SIKES. Thank you, Senator.

Senator GOLDWATER. Do you have any statements you would like to make, Mr. Sikes?

We will include your biographical sketch in the record.

[The biographical sketch follows:]

JOHN C. DANFORTH, MISSOURI, CHAIRMAN
BOB PACKWOOD, OREGON
BARRY GOLDWATER, ARIZONA
NANCY LANDON KASSEBAUM, KANSAS
LARRY PRESSLER, SOUTH DAKOTA
SLADE GORTON, WASHINGTON
TED STEVENS, ALASKA
BOB KASTEN, WISCONSIN
PAUL S. TRIBLE, JR., VIRGINIA
ERNEST F. HOLLINGS, SOUTH CAROLINA
RUSSELL B. LONG, LOUISIANA
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
DONALD W. RIEGLE, JR., MICHIGAN
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
W. ALLEN MOORE, CHIEF COUNSEL AND STAFF DIRECTOR
RALPH B. EVERETT, MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Sikes (Last) Alfred (First) Calvin (Other)

   Address: 2454 E. Greenwood (Current residence) P. O. Box 3946 (Business)

   Springfield, MO 65804 Springfield, MO 65808

2. Position to which nominated: Assistant Secretary of Commerce for Communications and Information Date of nomination: February 19, 1986

3. Date of birth: December 16, 1939 (month) (day) (year) Place of birth: Cape Girardeau, MO

4. Marital status: Married Full name of Spouse: Martha Helen Pagenkopf Sikes

5. Names and ages of children: Deborah Sue, 22 Christine Louise, 20

   Marcia Cay, 16

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Westminster College	1957-1961	AB	June 3, 1963
University of Wisconsin	Summer of 1960		
University of Missouri	LLB 1961-1964		~~January 1, 1964~~

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
Nov. 1978	- Present	Sikes and Associates, Inc.	Springfield, MO	Broadcasting/ Consulting
Jan. 1977	- Oct. 1978	John Mahaffey	1722-VV So. Glenstone Springfield, MO	Broadcasting
Jan. 1973	-Dec. 1976	State of Missouri	Jefferson City, MO	Director Dept. of Community Affairs and later Consumer Affairs, Regulation & Licensing
Nov. 1972	-Dec. 1972	MO. Transition Government	Jeff. City, MO	Director of Gov-Elect Bond's Transition Staff
Feb. 1972	-Nov. 1972	Bond for Gov. Committee	Jeff. City, MO	Campaign Manager
Nov. 1970	-Feb. 1972	MO. Attorney General	Jeff. City, MO	Assistant Attorney General
Feb. 1970	-Nov. 1970	Danforth for Senator Committee	Jeff. City, MO	Organization Director & then Campaign Manager
Jan. 1969	-Feb. 1970	MO. Attorney General	Jeff. City, MO	Assistant Attorney General
March 1964	-Jan. 1969	Allen, Woolsey & Fisher	Springfield, MO.	Lawyer

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

Assistant Attorney General, Missouri Transition Government, Director Department of Community Affairs and later Consumer Affairs, Regulation and Licensing, Member of Transition Board - Bond Second Administration, Chairman Governor's Economic Development Council, Vice Chairman Missouri's Outdoor Recreation Council, Member Missouri's Organized Crime Task Force

STATEMENT OF ALFRED CALVIN SIKES

Mr. SIKES. Yes, please.

First of all I would like, Mr. Chairman, to thank my friend, Senator Danforth, for those kind remarks. And, I would like to do what is perhaps not appropriate, but what I shall take the privilege of doing, to introduce my wife, Marty, who is seated up there on my right.

I appreciate very much the opportunity to appear before the committee and to have you consider my nomination to be Assistant Secretary of Communications and Information of the Department of Commerce. I know that my biographical profile has been circulated, and it indicates that my principal communications background is with the mass media.

I should quickly add that I am now dividing my time between wrapping up my business affairs and studying the functions and policy development work of the National Telecommunications and Information Administration.

I am very conscious of the importance of the pending and developing issues facing both the domestic telecommunications industry and those that that industry serves. I am also aware of the trend that has in recent years converted the telecommunications trade surplus into a trade deficit. The National Telecommunications and Information Administration has a quality group of people working in those areas, both in the domestic and the international areas, and I look forward to building on those good efforts.

I would look forward, Mr. Chairman, to a set of policies that, while assuring universal telephone service, point toward an increasingly strong and competitive domestic and international telecommunications industry. It is important that we not let healthy companies stagnate from competitive restraints. It is important that a business environment exist which will quicken the pace that innovative products are offered at competitive prices. It is important that we have an industry that can reverse the current trade imbalance, and it is important that Government not create or perpetuate a regulatory framework that paralizes progress and assures huge nonproductive expenditures.

The issues facing this industry and facing our Nation as we experience rapid change are difficult. I know that progress in the past has frequently been very painful, but I am confident that these goals can be reached within an acceptable social framework.

Thank you.

Senator GOLDWATER. Thank you very much, Mr. Sikes.

Senator.

Senator HOLLINGS. Thank you very, very much, Mr. Sikes. We welcome you and look forward to working with you.

Mr. SIKES. Thank you.

Senator GOLDWATER. That is the longest statement you ever made.

Senator HOLLINGS. The most sensible one I ever made.

Senator GOLDWATER. Senator Danforth.

The CHAIRMAN. No thank you, Mr. Chairman.

Senator GOLDWATER. Mr. Sikes, from your perspective as a broadcaster, how has broadcasting deregulation worked? Are there other

areas of broadcast deregulation in which further deregulation may be appropriate?

Mr. SIKES. Well, I think it has worked well. I think there were a lot of make-work things that broadcasters—and I can speak most intimately from a radio standpoint—used to have to do that they no longer have to do. For example, keeping a log of minute-by-minute broadcasting on your station in order to prove at some future point that you did not play too many commercials, and that you played enough public service, and educational, and other kinds of programs.

I think that when you think in terms of the radio industry and the huge number of radio stations, that there is in fact the diversity, the attention to public service, the attention to that kind of programming without the need to have often stifling and always costly regulation.

I cite that as only one example of some of the deregulation that took place in the mass media, and I think it was a good move. I think it has made the resources employed in radio and television more productive. I believe that has been very helpful.

Senator GOLDWATER. You have said that you want to explore ways to improve the viability of AM radio. AM of course is the very basis of all of our radio. What are some of your ideas in that particular area?

Mr. SIKES. Well, there are somewhere on the order of 4,800 AM radio stations and most of these are commercial. In recent years there has been an extraordinary decline in the audience for AM radio, and it has really brought the persons who own AM radio to the point—and I do not mean that this is true of all AM radio stations; there are some that have an historical momentum that serves them very well—but it has brought many AM radio station owners to the point that they are not any longer investing money or energy in AM radio.

As a consequence, it quickens the pace of the decline of the audience. I think the only way that is going to be reversed is to have the people who invest the money, and who manage AM radio stations, understand that there will be a rough parity in the next few years in the quality of the reception. The only way that is going to happen is if we have better AM receivers in the hands of consumers, and we have technologically strong AM radio stations.

It gets to be a chicken-and-egg sort of thing, but I think that there has been a lot of Government involvement which has brought AM radio to its knees. I think there might necessarily have to be some Government involvement that produces a healthy AM radio band once again, and that also provides a far greater amount of competition in commercial radio.

Senator GOLDWATER. Do you feel that the advent of stereo to AM is going to enhance that medium?

Mr. SIKES. Well, yes, I think it will. I think, though, that the first step has to be just simply producing a good AM radio receiver. I think that many of the stereo AM radio receivers are good receivers, which is not true of so many of the monophonic AM receivers that have been produced in recent years.

We simply have to have the kind of receivers that can maximize what technology will allow, both in terms of general fidelity as well

as in terms of stereo reception. I understand that Chrysler, for example, will be selling in the very near term stereo radios for the automobile that, if they are stereo, also have an AM stereo receiver. I think it is important that we make that kind of progress, because if the owners and managers can understand that there is going to be some rough parity down the road, then they will begin to put money and energy back into programming. That will result in AM radio's reversing the pattern and beginning to move in a positive direction.

Senator GOLDWATER. I do not believe there is a single facet of technology that is going to make more advancement in the next few years than communications. I am able to get the best stereo I have heard off of satellites, and that is of course the coming thing.

I noticed in the trade paper yesterday that they have perfected a flat satellite disk that can be made part of the chimney so that it will not show.

And I am going to put your antenna up some day, do not worry.

The CHAIRMAN. Thank you.

Senator GOLDWATER. Just one more question.

Since divestiture, we have seen increases in local telephone rates. Although long-distance rates are going to come down again in just a short time, we are concerned that these increases may threaten the goal of universal service. What role do you see for NTIA in preserving universal service?

Mr. SIKES. Well I am, first of all, committed to that, Senator. We cannot make it happen in the sense of regulating its occurrence, but certainly from a research, from a policy development standpoint, we fully intend to energetically support universal, affordable service.

Now I think it can be supported within the framework of a much more competitive telecommunications industry. But I think it has got to remain an overriding goal.

Senator GOLDWATER. Well, you have a lot of problems in that field. My personal feeling is that the worst thing we have gone through in this country is the breakup of AT&T because we have seen nothing but confusion. We have good service, bad service, no service. It all depends on what you pick up, and who you get.

I have no further questions, but I see that we have the Senator from Virginia who might have a few questions.

Senator TRIBLE. Mr. Chairman, I have no questions. I am here to welcome Mr. Sikes and look forward to working with him.

Senator GOLDWATER. Do you have any questions?

Senator HOLLINGS. While Senator Gorton is getting his questions there, the $24 million program that you distribute in facilities' grants to the public broadcasters, I wondered what your comments would be on that particular program. I take it you favor the program, and you are ready to administer that?

Mr. SIKES. Yes; I understand that, essentially, the administration has recommended that the program not be funded. But it continues to be funded, and that has occurred over a period of a number of years. From my standpoint, I have worked closely with public television and public radio, particularly in my hometown where I helped put the public television station on the air many years ago.

I think it is an essential dimension of a healthy communications industry, and would look forward as the program is funded, if it is funded, to a very effective grants' administration program.

Senator HOLLINGS. Very good. One other thing, Mr. Sikes, with respect to this international trade. Could your office develop for us, please, a list of those competitive practices by our trading partners that people up at this level always call unfair? There is no such thing as fair or free trade. I have found businesspeople are very, very competitive, and should be. And as we can bring the economic pressures for them to change around, they will. But unless and until we do that, we are not going to really get in on the trade war that they are all afraid might happen that has already ensued for the last 20 years. It is very dynamic, and understandably so.

All the governments are emulating us with our support price programs in agriculture, Eximbank, and what have you. They have given us now the state of the art in governmental assistance to their industry, their agriculture, and we like little children up here are running around, protectionism, protectionism, free trade, we might start a trade war.

It is just a very annoying thing, and I welcome you in this particular post because you can educate us as we in turn try to become a more competitive society, which brought us to a great nation. If we could get a list from you of those kinds of competitive practices in the communications field that you have already commented upon in your opening statement, we might find ways in order to in turn compete.

I am very much of the Roosevelt school during the days of the Depression that in order to keep the banks open, he closed the doors; in order to save the farms, he plowed under the crops. And in order for us to remove some barriers, maybe we will have to raise some and remove them, both. But we are not going to get anywhere around here whining, and crying, and having these meetings, and please put on a quota, and all of that kind of nonsense.

That is not the real world. The real world is to get down there and start competing, and when you do that you will not start a trade war, you will participate in it, and you will level off that playing field so that our folks, the Americans themselves, can compete on a level playing field. We need you to help us level that playing field in an intelligent fashion. You are in a key spot to educate us.

So will you do us a favor in this committee and just sort of prepare a brief or a listing of those things that you consider to be competitive trade practices by our trading partners. There is nothing wrong with them. I am not angry with the Japanese; I am angry with me in Washington up here. I find that I am not fully informed to know how to get at the particular problem. I think you can help us immeasurably.

Mr. SIKES. I will enthusiastically do that.

Senator HOLLINGS. Thank you, very much.

Senator GOLDWATER. Thank you.

Senator Gorton.

Senator GORTON. No questions.

Senator GOLDWATER. No questions. Well, Mr. Sikes, we have enjoyed having you here very much. We look forward to your term of service. As I told you, I think this is probably the most important field that you could become occupied in. It is a very rapidly changing field. I do not care how fast you buy new equipment, it is outdated by the time you plug it in the wall. So you have to keep that constantly in mind.

We do have a problem on public broadcasting that I do not mind telling you we cannot seem to put our finger on. People always feel it is strange that I, as a rather subtle advocate of conservatism, would back public broadcasting, but I think it is the only source of decent programming we have left in this country, and I would like to see it continue. But we are, and we have been, receiving a large number of complaints about the abuses in advertising practices by a few of the larger stations. So I would like to see you keep your eye on that, because one of these days if these abuses continue, we are going to be faced with the necessity of making a decision as to whether or not public broadcasting can continue to exist as we now know it.

Mr. Sikes, that is all the questioning we have. We thank you for coming.

With that, the meeting is adjourned.

Mr. SIKES. Thank you, Mr. Chairman.

[Whereupon, at 9:25 a.m., the hearing was adjourned, subject to the call of the Chair.]

[The following information was subsequently received for the record:]

BRIEF SUMMARY OF COMPETITIVE TRADE PRACTICES IN OVERSEAS MARKETS

LIMITED OPERATING AGREEMENT

An operating agreement between a U.S. carrier and foreign administration is necessary prior to the initiation of direct telecommunications service between countries. Operating agreements specify the type of service to be provided and the terms for sharing revenues with the PTT. Most foreign administrations appear reluctant to operate with a large number of carriers, citing added administrative and operating costs.

RESTRICTIONS ON THE USE OF LEASED PRIVATE LINES

Private line policy in other developed countries is far more stringent than in the United States. Conditions on the use of private lines limit resale and shared use, as well as interconnection between private lines and the public switched network. In West Germany, the PTT uses volume-based, rather than flat-rate, tariffs for national private leased circuits and has proposed such pricing policies for international leased lines as well. These measures serve as protection for PTTs from competition in the provision of data processing and other information based services.

RESTRICTIONS ON THE CONNECTION OF TERMINAL EQUIPMENT

Although terminal equipment has been almost completely deregulated in the United States, in most other countries, equipment suppliers must obtain some kind of approval from the government owned telecommunications monopoly to interconnect terminal equipment to the network. Such limitations on the type of equipment that can be interconnected may be applied in a discriminatory manner. With the lengthy approval process for non-PTT terminal equipment, users' options may be severly limited. This policy, in turn, protects the local equipment suppliers.

DISCRIMINATORY TECHNICAL STANDARDS FOR DATA COMMUNICATION SERVICES

Data communications standards may be used to discriminate against foreign users by limiting the compatibility of U.S. and foreign equipment or software. This amounts to pressure to use locally available equipment and/or software.

PRIVACY

Laws in European countries authorize limits on transborder transmission of computer stored, personal data in order to protect the privacy of their citizens. Licenses to transport such data must be obtained prior to transmission and may be denied if the privacy laws of the receiving country are perceived to be not equivalent to those of the originating country.

RESTRICTIONS ON THE USE OF FOREIGN DATA PROCESSING FACILITES

In Canada and West Germany, bank records may not be transferred to other countries for data processing without the approval of bank regulatory authorities. In addition, leased line restrictions may ensure that data processing takes place only within their borders. Brazilian policy makes multinationals' access to international communications links conditional on the use of domestic labor and machinery for data processing.

CULTURAL AND OTHER INFORMATION RESTRICTIONS

Some countries contend that the fragile nature of their culture or economy requires broadcasting, advertising, and/or data-base transactions to be restricted. The most well known example is the Canadian statute imposing special tax burdens on Canadian firms for advertising on U.S. television stations received by Canadians.

NATIONAL ASSERTIONS OF DATA OWNERSHIP

Increasingly, countries are asserting the right to protect data pertaining to them from "exploitation" by other countries on the grounds that information is a national resource subject to government control. This right has been asserted, for example, in order to oppose remote sensing of geographic data by satellites.

GOVERNMENT PROCUREMENT POLICIES

Often, procurement policies constitute a serious trade barrier to the telecommunications industry. Telecommunications equipment in most countries is purchased by government agencies. In some countries, such procurement is subject to explicit "buy national" policies. In others, discrimination against foreign suppliers occurs informally, often through failure to adequately publicize bidding opportunities or unexplained delays for approval of products offered.

TECHNICAL STANDARDS

Technical standards are developed on a national, regional, and international level. Standards for some telecommunications equipment differ from American standards. Some countries' and regional organizations' standardization procedures are not transparent, and therefore not open to all interested parties. A domestic or regional standard rather than an international one favors those equipment providers currently in the market.

INDUSTRY TARGETING PRACTICES

Many foreign governments undertake measures which are designed to protect domestic firms from foreign competition, promote the growth of certain sectors, and improve the export competitiveness of domestic firms. These measures include: closing the domestic market to foreign firms, tax breaks, relaxing anti-trust laws to permit joint ventures, research and development funding, market reserve, subsidies, and favorable export financing.

Several of these measures have been applied to the telecommunications and information sectors. Foremost is the practice of limiting market access to telecommunications services and equipment providers, either through refusal to enter into operating agreements or through discriminatory procurement and market reserve policies which favor domestic firms. U.S. firms are often at the competitive disadvantage in the domestic as well as foreign markets due to preferential export financing. For example, the French Government believes that French exporters deserve unlimited

assistance, mainly in the form of export financing and insurance programs. It has channeled funds directly into research and development for the electronic office equipment and consumer electronics industries. The Japanese are also committed to growth in exports as a primary means to pay for Japanese imports. The world leader in telecommunications equipment exports, Japan promotes export financing, insurance, research and development funding, and developmental loans to potential market/countries. These measures apply also to the computer and electronics industries, including a software development tax free reserve which channels funds from sales into research and development.

PAUL H. LAMBOLEY AND J.J. SIMMONS III TO BE COMMISSIONERS, ICC; AND JANET HALE TO BE ASSISTANT SECRETARY OF TRANSPORTATION FOR BUDGET AND PROGRAMS, DOT

FRIDAY, MARCH 7, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member; Pamela Garvie, staff counsel; Linda Morgan, minority staff counsel; and David St. John, minority professional staff member.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. The hearing will come to order, please. We are going to take first the renomination of Jake Simmons and Paul Lamboley as members of the Interstate Commerce Commission. I see we have the former chairman of this committee, and a good friend of mine, and a man that I have worked with for years, Senator Howard Cannon, who I assume to be here to say a few words on behalf of Commissioner Lamboley.

STATEMENT OF HON. HOWARD CANNON, FORMER U.S. SENATOR FROM NEVADA

Senator CANNON. Thank you very much, Mr. Chairman.

I had the pleasure of presenting Paul Lamboley to the committee before, and I am back again to present him at this time. He has now been nominated for a full term. You will recall, his nomination before was delayed for some period of time, and he had a rather short time to finish up.

Paul is a resident of the State of Nevada, one of my former constituents, a very fine lawyer in that State. He has done a good job on the Commission since he has been down there. And, of course, the size, as the chairman knows, of the Commission has changed now and we hear a lot more good reports than we were hearing at one time.

I am delighted to present Paul Lamboley for your consideration for this nomination.

Senator PACKWOOD. Senator, thank you. I just saw Senator Hecht in the room. Are you coming to say a few good words about the Commissioner?

STATEMENT OF HON. CHIC HECHT, U.S. SENATOR FROM NEVADA

Senator HECHT. I certainly am.

Mr. Chairman, I am pleased today to be able to introduce to this distinguished committee Mr. Paul Lamboley of Nevada as he seeks reappointment to be a member of the Interstate Commerce Commission.

Mr. Lamboley has served on the Commission since September 1984 and upon his renewal approval will complete a full 5-year term expiring in 1989.

Mr. Lamboley is a former practicing attorney from Reno, where he has gained an extensive knowledge in labor-management relations. He has specialized in contract administration, grievance, arbitration, has been involved with litigation on behalf of employees and employee organizations both in the public and private sectors.

Mr. Chairman, the State of Nevada is proud to have Paul Lamboley serve his country and I heartily recommend him to this committee.

Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you, Senator.

I will place in the record at this time another lauditory statement of the Commissioner from Senator Paul Laxalt, who cannot be with us this morning.

[The statement follows:]

STATEMENT OF HON. PAUL LAXALT, U.S. SENATOR FROM NEVADA

Mr. Chairman, members of the Commerce Committee, It is a distinct pleasure for me to introduce to you once again a fellow Nevadan, Paul H. Lamboley, who has been renominated to continue his service as a member of the Interstate Commerce Commission.

As the distinguished members of this panel are well aware, the ICC has assumed tremendous responsibilities and faced difficult challenges over the last several years. As one who has tracked the activities of the Commission very closely during this time, I have come to appreciate the need to fill commission posts with highly capable men and women.

Indeed, these individuals must possess the knowledge and experience to accomplish the Commission's ambitious goals.

Paul Lamboley, during his first two years on the job, has demonstrated beyond any doubt that he possesses the attributes that are essential to successfully carrying out the Commissions policies and goals.

Paul has brought to the Commission an impressive background in law and business that gives him an extremely valuable and unique perspective on the many important issues that confront the ICC.

Prior to his service with the Commission, Paul was an experienced hand in the areas of labor-management relations, civil and criminal law and governmental relations. Paul's varied interests put him before trial courts, appellate courts, administrative agencies and governmental bodies at the local, state and Federal levels.

Paul has utilized his extensive legal knowledge in helping to guide the ICC toward policies which promote a more efficient and deregulated economic environment. This has been an important factor in creating the type of competitive spirit and unfettered growth which is essential to the future of our nation's surface transportation industries. I believe Paul Lamboley is and will continue to be among the leaders in this effort.

Let me conclude by speaking on behalf of the citizens of Nevada. We are proud of the way Paul has executed his responsibilities—carrying out his important functions on the Interstate Commerce Commission in the professional and dedicated manner that we've come to expect from Paul.

Mr. Chairman, I'm sure you and the other members of this distinguished committee can understand, therefore, how delighted I am to introduce Paul Lamboley to this panel once again. I'm proud of what he's accomplished and I'm certain he'll continue to be an integral part in the continuing work of the ICC.

Thank you very much.

Senator PACKWOOD. I wonder if I might ask Commissioner Simmons to come up also and have you both at the table at the same time, because the questions I will have will apply equally to both of you.

I see we have Senator Boren here, I assume to make an introduction of Commissioner Simmons.

STATEMENT OF HON. DAVID L. BOREN, U.S. SENATOR FROM OKLAHOMA

Senator BOREN. Mr. Chairman, I am very pleased, as I have seen in the past, to present Mr. J.J. "Jake" Simmons III to this committee. He, of course, has been reappointed by the President to another term on the Interstate Commerce Commission, where he already serves with distinction.

He is well known to the members of this committee and his background is well known. He has previously served as Administrator of the Oil Import Administration, Deputy Director of the Office of Oil and Gas of the Department of the Interior and Under Secretary of Interior, as well, as having served on the Interstate Commerce Commission previously.

In addition to his Government service, he served with ability in the private sector and held for several years the position of vice president with the Amerada Hess Corp.

I am especially proud to say that the friendship between the Boren family and the Simmons family is a friendship that spans three generations. Jake Simmons and his family are among the most respected business and civic leaders of our State. His father was an outstanding business leader. His brother is an outstanding business leader in our State. I asked him, for example, to sit on my judicial nominating commission, which is an indication of the kind of trust that I had in his brother.

Senator Nickles would be here with us this morning, but he has been detained. He requested not to put a statement from him in the record. Among other things, he describes J.J. Simmons III as an outstanding businessman and an earnest and enthusiastic public servant. I think those words are well taken. Jake has very deep feelings about public service. He wants to render service to this country. He is a person who is willing to work hard and does work hard as a public servant. He is a person of balanced judgment and I have found that he always tries to carefully make decisions based upon what he believes is truly in the national interest.

I cannot think of better personal qualities than those possessed by Jake Simmons as we seek to have someone serve in this important post. Mr. Chairman, I commend him to you enthusiastically.

Senator PACKWOOD. Senator, thank you.

Without objection, I will also insert a statement from Senator Johnston, Commissioner Simmons, on your behalf right after Senator Boren's statement.

[The statements follow:]

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Mr. Chairman and distinguished members of the committee, it is my pleasure today to recommend an outstanding businessman and an earnest and enthusiastic public servant to you for appointment to the Interstate Commerce Commission, Mr. J.J. Simmons, III.

I am especially proud of Jake Simmons because of the honor he has brought to our home state of Oklahoma.

Jake Simmons' varied background with both the government and private industry has equipped him to be a valuable member of the Interstate Commerce Commission.

Jake's career began in his hometown of Muskogee, Oklahoma after having earned his geological engineering degree at the University of St. Louis. At the Simmons Royalty Company, Jake took on growing responsibilities. Working his way up in the company, he served as company geologist, secretary-treasurer and vice president.

During his time in Muskogee, Jake began taking an active interest in local civic affairs.

In 1961, Jake Simmons' enthusiasm and expertise brought him to Washington, D.C., where he served in the U.S. Department of the Interior in a number of petroleum-related capacities.

As Regional Defense Oil and Gas Specialist, Jake planned and directed the Emergency Preparedness and Mobilization of the petroleum and natural gas industry in a five-state area. When he became Domestic Petroleum Production Specialist, he served as an advisor to the Secretary on all technical matters and policy decisions involving domestic oil and gas exploration, drilling, production, and conservation practices.

In 1966, Jake became the Assistant Director of the Office of Oil and Gas at the Department of the Interior. This made him the principal advisor and consultant to the Secretary and Assistant Secretary for Mineral Resources in formulating federal policy as it related to the adequacy and the proper development of domestic and foreign petroleum and natural gas resources.

As Deputy Administrator and later Administrator of the Oil Import Administration within the Interior Department, Jake became the primary official charged with formulating and developing policy, rules, regulations, and procedures for the control of petroleum product imports into the United States and Puerto Rico; the licensing of importers of such imports and the allocations of amounts of such imports to the more than 200 refineries and petro-chemical plants, all in the interest of national security; and encouraging and promoting a healthy domestic petroleum industry.

In 1970, he returned to the private sector to assume the position of Vice-President for Government Relations and Assistant to the Chairman of the Board of the Amerada Hess Corporation in New York City.

Jake was appointed to the U.S. Interstate Commerce Commission in 1982, where he served as Commissioner. In 1983, he returned to the Department of the Interior as Under-Secretary. Since 1984, he has been the Vice-Chairman of the I.C.C.

In addition to his distinguished career, Jake has received honors and awards from government agencies, private organizations and educational institutions. He also authored several publications.

Mr. Chairman, I believe Jake would continue to be a strong asset to this Administration and to the interests of our country. It is, therefore, with great pleasure and sincerity that I urge my colleagues to recommend favorably to the Senate the confirmation of Mr. J.J. Simmons, III, to be a member of the Interstate Commerce Commission.

STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

Mr. Chairman, I sincerely regret that I was unable to be present this morning to introduce to the Committee my good friend, Jake Simmons. However, I know that as a result of Mr. Simmons' many years of public service, the Committee is well aware of his fine abilities and accomplishments. I hope that you and he will forgive my absence, but I am confident we can look forward to expeditious and favorable consideration of his nomination by the Committee. I know further that we all look forward to working with him as he returns to the post where he has served us so ably.

Thank you for your indulgence in reading this statement, and my best wishes to you, the Committee, and Vice Chairman Simmons.

Senator PACKWOOD. David, thank you for coming this morning.
Senator BOREN. Thank you, Senator.

Senator PACKWOOD. Now we will start with Commissioner Simmons and then Commissioner Lamboley.

Senator PACKWOOD. I will place your biographical sketches in the record. Do you have a statement, Commissioner?

[The biographical sketches follow:]

BIOGRAPHICAL SKETCH OF PAUL H. LAMBOLEY

Address: 4503 Dalton Rd., Chevy Chase, MD.

Birth date/place: July 17, 1940—Milwaukee, WI.

Marital status: Married, Stephanie J. Lamboley (nee West).

Children: Nicole J. Lamboley (Age 18); Joelle A. Lamboley (Age 15).

Education: (1) Monroe H.S.; 1954-58; H.S. Diploma; (2) Univ. of Notre Dame; 1958-62; Bachelor of Science Degree 1962; (3) Univ. of Colorado; 1962; (4) DePaul Univ. Law School; 1963-64; and (5) Univ. of Wisconsin Law School; 1965-67; Juris Doctor 1967.

Employment record: September 1984 to present: Commissioner, Interstate Commerce Commission; 1970-84: Self-employed Lawyer—Reno, Nevada; 1969-70: Stewart & Horton, Lawyer—Reno, Nevada; 1968-69: Woodburn, Wedge, Blakey, Folsom & Hug—Reno, Nevada; 1967-68: Nevada Supreme Court, Law Clerk, Supreme Court Building—Carson City, Nevada; 1965-67: Jurgensmeyer & McQuinn, Law Clerk—Elgin, Illinois; 1964-65: St. Edwards H.S., Teacher—Elgin, Illinois; 1963-64: Park Elitch Wholesale, Sales—Denver, Colorado; 1962-63: Scotch & Sirlion, Bartender—Denver, Colorado; Laffite LeProfile, Bartender—Denver, Colorado; 1955-62: Part-time employment—Monroe, Wisconsin; Stock Clerk, Construction Worker, Truck Driver, Warehouseman.

Government experience: See above.

BIOGRAPHICAL SKETCH OF JOSEPH JACOB SIMMONS III

Address: 2736 Unicorn Lane, N.W. Washington, DC 20015.

Date of birth: March 26, 1925. Place of birth: Muskogee, Oklahoma.

Marital status: Married, Bernice Elizabeth Simmons.

Names and ages of children: Maj. Jacob Simmons IV—37, Mrs. Mary Agnes Brusick—36, Mrs. Bernice E. Garza—34, Jacolyn A. Simmons—31, and Eva F. Simmons—24.

Education: Manual Training High School, Muskogee, Oklahoma, 1939-42; University of Detroit, Detroit, Michigan, 1942-44; University of Detroit, Detroit, Michigan, 1946-47; St. Louis University, St. Louis Missouri, 1947-49, B.S. Geol. Engrg. 1949.

Employment record: 1984 to Present, U.S. Interstate Commerce Commission, Washington, DC, Vice Chairman; 1983-84, U.S. Department of the Interior, Washington, DC, Under Secretary; 1982-83, U.S. Interstate Commerce Commission, Washington, DC, Commissioner; 1970-82, Amerada Hess Corp., New York, NY, Vice President; 1961-70, U.S. Department of the Interior, Washington, DC, Oil Import Administrator, Petroleum Positions, etc.; 1949-61, Simmons Royalty Company, Muskogee, OK, Secretary-Treasurer, Geologist.

Government experience: See above.

STATEMENT OF J.J. SIMMONS III

Mr. SIMMONS. I do not have any formal remarks, Mr. Chairman. Thank you and thanks to the Senators for their kind statements.

In my last appearance here I stated that some of my proudest moments in my life have come in Federal service, and I guess that is why I returned to Federal service. I feel fortunate to be before this committee and fortunate to serve in the Interstate Commerce Commission.

Despite some of the controversy and criticisms that have been alleged to the Commission, I feel fortunate to be here again, and I want to assure you, Mr. Chairman, that I believe the Commission at this particular time is a collegial body and we intend to approach our decisions in that particular manner.

As the Senator said, I have experience in the Government. I have experience in the private sector. And I am willing to continue this service to my country and I am willing to answer all questions that you and the committee might have.

Senator PACKWOOD. Thank you.

Commissioner Lamboley.

STATEMENT OF PAUL H. LAMBOLEY

Mr. LAMBOLEY. Thank you, Mr. Chairman.

It is indeed a pleasure and a privilege to be here this morning. I want to thank Senator Cannon, Senator Hecht, and Senator Laxalt for their support and kind remarks for the record.

I would like to think that my tenure on the Commission has been a positive influence on the Commission affairs and that I have been a contributor. I have enjoyed very much my service as a Commissioner, and would hope to be able to continue in that role and the progress of the Commission.

I would be available this morning, as the committee needs, to review any issues or answer any questions that you or other members of the committee may have. Thank you.

Senator PACKWOOD. Thank you.

Let me start with you, Commissioner Lamboley, if I may, although the questions I have will apply equally. Commissioner Simmons can answer afterward and I will go back and forth between you.

Let us start with truck deregulation. In your judgment, considering the present state of competition in the industry, how much of the Commission's time and resources are needlessly expended on matters relating to truck deregulation?

Mr. LAMBOLEY. Mr. Chairman, the Commission has consistently attempted to follow the changing patterns in the marketplace and has reduced its time and energies in the truck-related areas. It is now down to a point in time, I think, that it is fair to say that the numbers of man-hours and Commission activities are down to the more critical areas that still perhaps occupy our concerns and attention, and those deal with safety and insurance in the motor carrier area.

I think it is fair to say that that is where we have been focusing most of our energies, to try and solve those problems that may still exist. We still have, of course, because of some bankruptcies and some acquisitions, lingering concern for market power and market positions that may result, as well as the collection practice review of some of the negotiated rates.

Senator PACKWOOD. You mean that in terms of economic regulation—forget insurance and safety for the moment—that the time spent by the Commission now is de minimis in terms of economic regulation of trucks?

Mr. LAMBOLEY. Yes, sir.

Senator PACKWOOD. Commissioner Simmons.

Mr. SIMMONS. I feel the same way, Senator. I think that it might be in the public interest—or it is in the public interest, I am sure—to eliminate all unnecessary economic regulation.

I am sensitive to whatever disruptions might occur as it relates to small truckers, if there is such legislation that does take place. I am even sensitive, Senator, to those particular persons—you asked about numbers in the Commission—those 200 or 300 people that might not be employed at the Commission any more.

Senator PACKWOOD. But that is not a justification to continue truck deregulation, so they can be employed.

Mr. SIMMONS. I agree, sir. I agree wholeheartedly. The welfare of the 200 or 300 people should not be considered as it relates to the entire public need.

Senator PACKWOOD. You mentioned the small truckers. Is it not true that you had scores, hundreds, thousands of new trucking companies, small trucking companies, form, many of them successfully, many unsuccessfully, but formed since deregulation started?

Mr. SIMMONS. No doubt about it, sir. And I think the number is often passed around that we have 30,000 truckers now, and certainly a lot more truckers have been able to get into the business. By the same token, I think there is just so much business out there, and those truckers have had to compete, and as they compete the public gets the benefit from it.

Senator PACKWOOD. Well, that is the experience we have had in this committee. We have had several oversight hearings. I cannot find any shipper group that complains about truck deregulation. I do not care if they are small package shippers or big truckload shippers, or whether they are in a town the size of New York or in a town the size of Newport, OR. They seem to think they have better service than they had before.

By and large, I find these business people reasonably savvy. They know if they have better service than they had before.

Mr. SIMMONS. I do not think there is any doubt about that, sir. Most of the people that come in to see us, I assume they are truckers that are doing well, because those that are not doing too well——

Senator PACKWOOD. Do not come in to see you?

Mr. SIMMONS. Do not come in to see us. I mean, they are out there trying to make a living.

Senator PACKWOOD. Well, in that case, in your judgment what, if any, areas of economic regulation—not insurance, not safety, but economic regulation—should be left regulated?

Mr. SIMMONS. I have to say the public need would certainly be served by complete deregulation.

Senator PACKWOOD. Commissioner Lamboley.

Mr. LAMBOLEY. At the present time, as you pointed out at the outset of your question, it would appear that the continuing need for economic regulation is nonexistent.

Senator PACKWOOD. Well, with those two answers I would hope that both of you, to the extent that the ICC has discretion—and there is no statute that is so ironclad that you have no discretion, or you would not have any court appeals from decisions that you make, unless you clearly violate it—we have still left you with a fair amount of discretion—I would hope that you, within that latitude, as you are going to have some cases still, vote to continue deregulation to the extent that you are permitted to do so by law.

What do you think about preemption of State regulation?

Mr. LAMBOLEY. One of the toughest issues you are going to have for a while, I think, Senator. It strikes me that Federal-State relations are going to be perhaps one of the cutting issues in the next several years, and certainly will be, in the area of motor carrier deregulation.

The States have indicated in a number of areas that they are willing and able to find methods of moving into areas that the Federal Government has indicated its desire to lessen its oversight, and lessen its influence, and involvement. It will take, I think, a large amount of time and attention to be able to balance the Federal-State relations such that there is some accommodation of the States' interests as well as a need to have some uniformity on a nationwide basis.

Senator PACKWOOD. In your judgment, are there areas that are not now preempted that should be preempted by Federal legislation?

Mr. LAMBOLEY. Right now, Senator, I think that the States and the Federal Government are moving toward a more coordinated, more sensitive, and more reciprocal appreciation of their respective positions, and I think right now we are still in a bit of a transition on some of those. But I think that the present legislation, albeit the tax issues that have come up in the various States, the Federal statutes are satisfactory regarding preemption, and it is now a matter of implementation and understanding.

Senator PACKWOOD. So, in short, you see no need for any further Federal legislation on the preemption issue?

Mr. LAMBOLEY. No, sir.

Senator PACKWOOD. Commissioner Simmons.

Mr. SIMMONS. I feel similar, sir. I am a respecter of State rights, but I also realize the harm that can be done by 50 States having different regulations, and to that extent where they become a burden I will certainly be in favor of preemption, where they really become a real burden.

Senator PACKWOOD. Are there areas where you think we should pass legislation to preempt certain actions of the State?

Mr. SIMMONS. I believe we have sufficient statutes at the time, considering everything that we have on the table.

Senator PACKWOOD. Senator Rockefeller.

Senator ROCKEFELLER Thank you, Mr. Chairman.

I fully intend to support the nomination of these two fine gentlemen, both of whom I have talked with, and I want to make that very clear at the outset.

I also want to make it clear, Mr. Chairman, that I do feel that the ICC has violated what I consider to be congressional intent with respect to the Staggers Act that I feel has been extremely damaging not only to my part of the country but to the original purposes of the act. In some cases I think the violation has been flagrant; whether it has been willful or not, I do not know. But I do intend to pursue certain adjustments to the Staggers Act, and I wish to be very clear about that.

I would like, if I could, to ask just a couple of questions of both nominees, whom, as I say, I intend to support.

I think it has been generally agreed, and Chairman Gradison made it very clear, that there has been a sudden discovery of reve-

nue adequacy problems, and she basically said, "Trust us; we are going to go at this again. We do not feel that it has been done properly." Well, a lot of the damage has been done with respect to coal. The rate competition is in many cases over and can only be readjusted by rather stunning action of one sort or another, either voluntary or involuntary, legislative or regulatory.

In the case of both of you gentlemen, do you agree with the revenue adequacy/inadequacy matter, and, if you do, when did you come to agree with that?

Mr. LAMBOLEY. Senator, it has been my experience I guess but once in the annual determination, last year, and now, following, this year, and I think the evidence is fairly clear at this juncture and there has been some time to develop the necessary evidence. I think the Commission as a whole clearly shares the view that there is something very wrong with the revenue adequacy findings and determinations that may be prevalent as conclusions for 1984.

The consequence is that I think you will see the acknowledgement of the Commission of that fact and examination of the revenue adequacy standard, hopefully including cost of capital, as well as perhaps an effort to provide some interim adjustments. There is a case pending. There are votes still being circulated regarding this year's revenue adequacy. My remarks may be somewhat constrained by the fact that we do have that case pending.

But I think it is fair to say, as the chairman has said before, that we are of a very singular mind that this revenue adequacy situation is not as it ought to be, and will be examined broadly. For my part—and I think shared by many of my colleagues—we need to give that a priority attention, because revenue adequacy permeates many rail-related issues, and it does so not just for the range of rate flexibility or the complaint cases.

It is a standard of evidence that, if seriously flawed, ought to be examined at its earliest possible time and some adjustment made. I think that we would hope to be able to report to you later about the success that we have had in evaluating that. We are not sure we have all the answers, but we are certainly going to explore the subject.

Senator ROCKEFELLER. Commissioner Simmons.

Mr. SIMMONS. Senator, there is no doubt about it; I think the Commission did not get religion quick enough as it relates to revenue adequacy. It certainly is something that we recognize, I think almost exclusively, that something is wrong with it. In a recent vote that I made, I asked the Bureau of Accounts to give us an options paper, and hopefully, if it does carry, I would hope that we would have their concerns with us, and maybe by July or August we could vote on it and actually have something done.

There are things that need to be examined, like embedded debt, that I do not think the present system properly examines, and it would certainly make a difference—or deferred taxes, also.

Senator ROCKEFELLER. The discovery of this problem is, as you both imply, relatively recent and is in and of itself a matter of concern for that reason. On the other hand, taking you both at your word on that, and the Commission as a whole at its word, that it is now going to proceed to get aggressive about these matters, then it is of concern to me that the Commission seems to approve of the

elimination of the ICC. At least the chairperson has indicated that view.

If the ICC finds religion on revenue adequacy and then it goes out of the business, the Department of Transportation, not having been through this born-again experience, might not have that same view. Should not I, as a Commerce Committee member, press both of you gentlemen strongly as to your views about the continuation of the ICC?

Mr. SIMMONS. I would be happy to answer that, Senator.

I have made few public statements since I have been in Federal service, but I unequivocally do not support the sunset of the ICC. I believe we have some very fine, capable people there, and I believe that with the renewed vigor that we seem to be attacking the problems together as a Commission, I believe we can show this Committee and the Senate some results.

Mr. LAMBOLEY. Senator, as I have indicated, I am a bit reluctant to be drawn into that debate because it has a demoralizing influence on our employees and undercuts the credibility of the agency when we start counting heads and polling of, I guess, we as Commissioners.

But the integrity of the institution is very important, and the integrity of an independent agency is very important. We are a constructive forum. We have a role. Our mission is not ambivalent and ought not to be viewed as such. I guess it is fair to say that on balance while I would prefer the neutrality of it, I would come down certainly and encourage the serious consideration of the independent forum and the integrity of that forum.

Obviously there are many issues which Congress will have to review before it makes the ultimate decision.

Senator ROCKEFELLER. Thank you, Mr. Chairman. Will I have a chance later for one additional question? Thank you.

Senator PACKWOOD. Senator Ford.

Senator FORD. Mr. Chairman, I will support the two nominees, and I will be glad to yield my time to Senator Rockefeller.

Senator PACKWOOD. Go ahead, Jay.

Senator ROCKEFELLER. Thank you very much, Senator Ford.

Whether or not Conrail is purchased by Norfolk Southern or whether it is spun off into the private sector via Morgan Stanley or some other approach, it looks to me as though abandonment is going to be an increasing problem—abandonment of lines. It already is, obviously, in the part of the country that Senator Ford and I come from.

What would be your approaches with respect to abandonment of lines as Commission members?

Mr. LAMBOLEY. Senator, one of the problems that I think we have both spoken to in the past, as have other members of the Commission, is the development of the record in abandonment cases as a critical need. We have found that in the past when hearings have been held in the areas involved in the abandonment, while it adds to a certain expense it allows many of the people who are directly influenced—whether it be the carrier or the shippers or the communities involved—the hearing process has been very helpful.

There has been a growth of understanding between the parties. Some arrangements have been struck. Abandonment requests have been withdrawn. The carrier has perhaps seen some improved service. The shippers likewise have understood that railroads do not exist as a free enterprise and to be gratuitously held in place, that there must be a reciprocal consideration both for service by the carrier as well as shipments tendered and traffic maintained for the benefit of the carrier by shippers as well in order to keep that service on the line.

In those cases where there has not been an ability to maintain the trunk carrier, I think there is some encouragement that a number of short lines have been able to come into existence and pick up the substituted service needs. The Commission has offices—the Office of Special Counsel as well as the Small Business assistance office—which in the past have played roles in bringing together the necessary people and pointing out the necessary resources needed for the establishment of substitute service by short lines.

And in our judgment, certainly in mine, the short lines, if they come into being for substituted service on a different economic scale, may need some special considerations. Whether it be for car supply, or competitive access situations, they are all tied together for the success and the viability of that substitute service.

So, Senator, I would be encouraged that we can address the difficult abandonments that may be anticipated, if at all, by Conrail transactions or indeed in other parts of the country through a Commission presence in the locales that are involved, perhaps holding hearings, and perhaps by assistance to shippers or carriers, that we could be very constructive in the area of abandonments.

Mr. SIMMONS. Senator, of all the present problems in the ICC, I have taken a harder line against abandonments probably than anybody. And my real concern is not only the immediate problems of shippers that are affected by them, I am concerned about the national security of the Nation.

There are some 172,000 miles of track, and we have abandoned about 16,000 miles of them so far. I hope my figures are correct; it has been a long time since I looked at them. But I think we should take a real hard look, and in that regard since I have been there, with the assistance of Commissioner Lamboley we have spoken to the military people over in DOD to be sure that they are adequately informed. We have found several cases where they have not, even though they were supposed to have read the Federal Register, just like anybody else.

But we now directly inform them and they are aware of it, and I believe it is a very serious problem. Certainly these two Commissioners, I believe, have really taken a hard look at all of the abandonments.

Senator ROCKEFELLER. The ICC in the past has suggested that the rail cost adjustment factor does not really permit the Commission to reduce rates. Now, first, do you agree with that position; and, second, if you do, do you think that legislation could help clarify the ability of the Commission to reduce rates with respect to that factor?

Mr. SIMMONS. I certainly do not believe—I agree with you in that it was first called to my attention when I see the prices of petrole-

um fuels going down and we were not able to make an adjustment as it relates to diesel fuel because it is going down. So we have a year lag, and I am disturbed by the fact that we can make no adjustment when the rates go down, but there are only the adjustments you can make when they go up.

Mr. LAMBOLEY. Senator, on our most recent rail cost adjustment, we have a matter pending before us on reconsideration. I will be a bit circumspect as a result of that.

But in general terms, the ability to adjust requires, I think, our close-in examination and scrutiny of the factors that go into those factors, and not only productivity but certainly the cost changes. As Commissioner Simmons points out, the cost change in fuel is a very real component and a very significant one of that adjustment. The parties have raised that before us presently, and we still have that matter pending before us in the most current one.

What Commissioner Simmons points out is once in a while, altogether too frequently, there is a time lag both in that type of calculation as well as revenue adequacy in which we are making adjustments after the fact and sometimes rather substantially after the fact. I think the Commission, however, has been moving progressively toward making our decisions on economic matters involving railroads more contemporaneous with the times at issue rather than having determinations made and then have periods of time pass. For example, 1984's revenue adequacy determination is now in 1986.

I think there is every reason to believe that with the computer services that we have available, both ourselves as well as those who are our constituent industries, that we perhaps can shorten that timeframe substantially.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator PACKWOOD. Senator Gorton.

Senator GORTON. Thank you, Mr. Chairman.

Either or both of you can answer these brief questions, if you will.

As you know, a number of short line railroads who are constituents in my State expressed serious concern that in moving ahead toward deregulation the Commission has failed to recognize the unique problems of short lines. They are particularly concerned about boxcar hire deregulation proposals. Are you aware of these concerns, both of you?

Mr. LAMBOLEY. Yes, sir.

Mr. SIMMONS. Yes, sir.

Senator GORTON. Are you aware that after the court reversed the Commission's order in the American Short Line Railroad Association, Conrail and boxcar leasing companies buried the hatchet and negotiated a compromise?

Mr. SIMMONS. Yes, sir, I am aware of that.

Mr. LAMBOLEY. Yes.

Senator GORTON. Are you familiar with the compromise that the short lines worked out with Conrail?

Mr. SIMMONS. Yes, sir, and I would expect that there will be a decision in some 60 to 90 days on it.

Senator GORTON. That was my last question.

Mr. LAMBOLEY. I think that it is fair to say, Senator, that we are all apprised, as I think the Chairman of the Commission has previously apprised the Members of Congress, that it is the Commission's intention to put on a very short fuse and rather immediate track the concerns that you are speaking of and hopefully have a decision.

Senator GORTON. I am very encouraged by those answers. Thank you very much.

Senator PACKWOOD. Senator Trible.

Senator TRIBLE. Thank you, Mr. Chairman. I have no questions.

Senator PACKWOOD. Let me ask a couple of questions. When Chairman Gradison was here 2 weeks ago, she said one of the highest priorities that she was going to put on the Commission was the decision in the coal rate cases, and that she was going to put it on the fastest expedited track that she could.

Do you see any reason why those cases cannot be decided quickly? There is no reason to reopen them or have to do anything else with them. The facts are there, are they not?

Mr. LAMBOLEY. We have three cases in which the record is presently closed and they ought to be on a fast track for determination. There are other cases, Senator—I think 18 to 20 cases—that are still open pending discovery and we have no idea what the parties' positioning are in those or what the timing, if closed.

But to your question directly, I think that has been one of the very valid criticisms, and that is we have not adjudicated these cases and we ought to be about that and will do so.

Senator PACKWOOD. And you see no need to reopen the closed case?

Mr. LAMBOLEY. At the present time, no.

Senator PACKWOOD. Commissioner Simmons.

Mr. SIMMONS. I feel as though it is something that I certainly cannot defend, and it is something that we should have already attended to, and we are going to pursue these cases immediately. However, there are things as it relates to revenue adequacy that we have got to clean up and do it quickly so that we can address these.

Senator PACKWOOD. Do you see any need to reopen the three closed cases?

Mr. SIMMONS. I do not see any.

Senator PACKWOOD. Let me ask you a question about revenue adequacy because I was intrigued when we had the oversight hearings. A number of the witnesses in opposition to the railroads testified regarding the profits of the railroad holding companies, or the holding company that may have included the railroad. They were more or less trying to give the impression that in terms of revenue adequacy the railroad was making great profits when what they were referring to was the holding company.

No one is seriously making the argument, are they, that revenue adequacy should be anything other than the adequacy of the railroad itself?

Mr. LAMBOLEY. Senator, I think that that very issue is one of those that has been put out for comment by the Rail Accounting Principles Board, as to who ought to be the reporting party. Your observations are correct. There are those who believe that the hold-

ing companies are really profiting by the disposition of assets that are transportation assets held formerly by the transportation company.

But in simple answer to your question, the rail transportation subsidiary is in a much different economic situation, and one of the questions, as I say, is who should be reporting. One of our reporting considerations is whether or not when there are dispositions of such assets, transportation assets, which may influence the ability and the viability and the revenue adequacy of the transportation company, whether that passes through and is simply disclosed.

Senator PACKWOOD. I understand the argument in terms of the disposition of assets as to whether they are transportation assets, but no one is making the argument that if the Burlington Northern or the Union Pacific sells coal off of lands that they have that the profits on the coal operation ought to be offset against losses or de minimis profits on the rail operations.

Mr. LAMBOLEY. I think that people recognize that any company has a right to diversify and account for their abilities in management and revenue profit centers.

Senator Packwood. The Commission's job in terms of revenue adequacy is to determine whether or not the rail segment of the holding company has adequate revenue to pay for the rail segment of the holding company.

Mr. LAMBOLEY. That is the concern.

Mr. SIMMONS. I agree, sir.

Senator PACKWOOD. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Do you gentlemen feel that if the ICC in its recent history since the Staggers Act was passed had been more aggressive with respect to revenue adequacy, various cost factors, and other matters, it could be that the cost of transporting coal in this country would be less today?

Mr. LAMBOLEY. Well, it is certainly fair to say that the Commission's policy regarding rate reasonableness, revenue adequacy and a number of things impacts coal rates and the freedoms and flexibilities that exist under the Staggers Act. It is hard to say, in direct answer to your question, where coal rates might be had things been different or had the Commission made different decisions or adopted different standards. I am simply not prepared to answer that question on that basis.

Senator ROCKEFELLER. You are not prepared to say that had there been a more vigorous test applied on various fronts that the cost of transporting coal would have been less today than it is?

Mr. LAMBOLEY. Senator, we would like to think that the implementation of the Staggers Act as we have been doing under our tenure as Commissioners have been guided by one of the concerns that the efficiencies, and freedoms, and flexibilities accrue to everybody such that it is not only the carriers but the shippers and consumers' ability to benefit by the efficiencies that we are hopefully implementing under our Commission policies, and to the extent that we pursue those aggressively I think that people ought to see and the general public ought to see the benefit of that and ought to have those visited by way of reduced rates, reduced costs on a broad base, and particularly to coal interests, not only domestic

considerations but the import-export nature of coal rates and the ability to participate in that market.

To the extent that we are responsible for transportation and transportation is a critical factor in the import-export activity, I want to assure you that we are very sensitive to the need to participate and do so aggressively and progressively.

Senator ROCKEFELLER. Mr. Simmons, before you answer, Mr. Lamboley, would you not agree on another subject that, roughly speaking, and very roughly speaking, at least three-quarters and probably more of the profits of the Norfolk Southern Railroad come from its rail-related business—that is, taking the holding company as a whole?

Mr. LAMBOLEY. I probably feel, Senator, that you are right and you probably have that information. I do not at my immediate recall, but that would probably be correct.

Senator ROCKEFELLER. Mr. Simmons.

Mr. SIMMONS. I am not sure about the Norfolk Southern.

But, nevertheless, revenue adequacy being one of the four factors that we consider in our coal rate guidelines, it is entirely possible that things might have been different.

Senator ROCKEFELLER. Would you gentlemen, if renominated, not feel—I understand, because we have talked, that you both feel deeply about the plight of the coal industry. Nobody is pretending that with the revision of the Staggers Act or the reborn nature of the ICC, if that should hold up either in fact or in attitude, rail rate reduction is going to solve all of our coal problems. Nobody pretends that, but it is a devastatingly flat situation.

There is not a great deal of light at the end of the tunnel. Oil prices, of course, make all of it much more complicated. We do, however, have this incredible supply of coal in this country, 400 years' worth. We could be energy independent. We are not. And therefore incrementally it seems to me that each of us in our various public responsibilities have to do all that we can on an incremental basis to try to make coal more attractive at home and abroad.

Would you not both, as Members, see that as part of your responsibility, to try and make coal more competitive?

Mr. SIMMONS. I am particularly sensitive to that, sir, having spent most of my life in the energy business. I agree with you we have some 400 or 500 years' supply of coal out there, at our present rate of consumption. I was particularly pained when I saw, to bring up a very controversial issue, the synthetic fuels program die, because I think if we do happen to have a national emergency we could very well have to do things in a hurry that maybe we could have taken our time to do. I am particularly pained by that particular development.

It is foolish for us to be importing 37 percent of our crude oil and maybe even 15 percent of our products into the country today with even the oil reserves that we have, and certainly we ought to be driving the price of energy, considering the reserves of petroleum and coal that we have, instead of other people dictating.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator PACKWOOD. Gentlemen, we have no other questions. Thank you very much.

Mr. LAMBOLEY. Thank you.

Mr. SIMMONS. Thank you, sir.

Senator PACKWOOD. Now, if we might consider Janet Hale, to serve as the Assistant Secretary for Budget and Programs at the Department of Transportation.

Let me say before you start that you have an exemplary record. It is not often that we have a nominee of your caliber come before us. I am delighted that you have been nominated for the position and am pleased to have you.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF JANET HALE

Address: 904 Independence Avenue, S.E., Washington, D.C. 20003.

Date of birth: April 2, 1949, place of birth: Buffalo, New York.

Marital status: Single.

Education: Southern Methodist University 1967-68; Miami University, 1968-71, B.S. 1971; Harvard University, 1979-80, M.P.A. 1980.

Employment record: October 1985 to January 1986, Department of Housing & Urban Development, 451 7th Street, SW, Washington, D.C. 20410, General Deputy Assistant Secretary; October 1982 to October 1985, Department of Housing & Urban Development, 451 7th Street, SW, Washington, D.C. 20410, Deputy Assistant Secretary; March 1981 to September 1982, Department of Housing & Urban Development, 451 7th Street, SW, Washington, D.C. 20410, Special Assistant & Director, Exec. Sect.; July 1980 to July 1981, JF Kennedy School, Harvard University, Cambridge, MA, Consultant; June 1979 to September 1979, National Campaign, George Bush for Pres., Arlington, VA, Field Representative; February 1979 to May 1979, State Representative, Rich Crotty, Tallahassee, FL, Admin. Assistant; and February 1977 to January 1979, Sen. Edward Brooke, 21 Beacon Street, Boston, MA, Special Assistant.

Government experience: See above.

STATEMENT OF JANET HALE

Ms. HALE. Mr. Chairman, I would just like to summarize my statement and I think it can be summarized very quickly that I am pleased and honored to be nominated for this position. I look forward to working with Secretary Dole. I think the issues of transportation that are before us and the Congress are particularly challenging and I look forward to working with those, your committee, and the rest of the Congress in that.

With that, we can proceed, if you have any questions.

[The statement follows:]

STATEMENT OF JANET HALE

Mr. Chairman, I am pleased to have the opportunity to appear today before the members of the Senate Commerce Committee. This is a particularly busy time for Congress and I want to thank you for working this hearing into your schedule.

I am very honored that the President has nominated me to be the Assistant Secretary for Budget and Programs at the Department of Transportation. I look forward to the opportunity to serve our nation and to work with Secretary Dole. The Assistant Secretary for Budget and Programs role is to advise the Secretary on the allocation of available resources so that the nation's transportation needs can be met. If approved, I will do my utmost to carry out the responsibilities of this position.

A major challenge facing all of us is the allocation of the proper level of resources across the spectrum of transportation programs. The President's proposals currently before Congress, by providing a vision for the future, reflect an integrated state, local, and Federal approach to producing a transportation system responsive to the people who use it.

My previous experience in both state and the Federal government, working in the budget and program policy analysis field, has prepared me for the position to which

I have been nominated. In addition, my experiences in public service have allowed me to learn firsthand the importance of close cooperation and consultation between Congress and the Executive Branch. Certainly, such cooperation has been of significant importance in Secretary Dole's efforts to assure that this Nation continues to enjoy the benefits of a safe, efficient national transportation network. I look forward to joining her in this effort.

Mr. Chairman, I share Secretary Dole's concern for the public safety and pledge my full support in working with your Committee and the Congress as we attempt to deal with the challenges before us.

Thank you for this opportunity to discuss my qualifications. I will be happy to answer any questions you might have.

Senator PACKWOOD. I have a few.

Tell me what you think about Amtrak.

Ms. HALE. Mr. Chairman, it is a difficult issue. If you look at the regional nature of those subsidies, if you look at the low ridership, if you look at the cost of subsidy per passenger, the commuting distance and the alternative services that those passengers might be able to use, it is a subsidy that this Congress, or at least this administration, can no longer afford to support.

Senator PACKWOOD. What is the subsidy on the Northeast corridor? Separate that from the rest of the Amtrak system.

Ms. HALE. I do not have that with me today—I can provide it for the record. I do know that is the one segment that might be able to operate as a stand alone, at least in terms of operating costs and if Amtrak deals with some of the other issues.

[The following information was subsequently received for the record:]

AMTRAK—NORTHEAST CORRIDOR SUBSIDY

On a fully-allocated cost basis (i.e., accounting for all overhead charges assessed to the NEC), the Northeast Corridor subsidy in 1985 was $269.47 million.

Senator PACKWOOD. Do you think there are justifications on occasion for the Federal Government to subsidize some forms of intercity, not intra, passenger transport?

Ms. HALE. I think we would have to look at individual cases. Looking at the regional nature of such subsidies, it depends on whether or not it is more appropriately a State or local responsibility rather than Federal, particularly in light of the relatively low level of assistance that State and local governments now put in. Clearly, they need to give stronger support in that area, and I really question at this stage whether or not——

Senator PACKWOOD. Do you think they would? We have enough difficulty getting people to ride the train from Los Angeles to New Orleans or San Francisco to Chicago. They just will not ride it in great quantities. But they do ride it in great quantities from Washington to Boston and back or Boston to New York and New York to Washington. Any of us who have ridden the train realize that they are mostly full or pretty close to it most of the time.

If, given that, you cannot still make a profit on it, is your answer that perhaps Massachusetts, and Connecticut, and Rhode Island, and New York, and Pennsylvania, New Jersey, Virginia, and Maryland will pick it up in some kind of regional coordinated body, and if they do not, c'estt la guerre?

Ms. HALE. I think that is correct, Mr. Chairman. There is a real concern about, as I said, the cost of it. There are alternative modes

of transportation that are available to those passengers, and we have seen no effort to date of the States being willing to talk, but we have also seen no pressure put on them to sit down and talk about whether or not that is something they want to participate in. We do not think they will until they see a real threat of the Federal subsidy being eliminated.

Senator PACKWOOD. Let's shift over to motor carrier safety. The administration, of course, is recommending that funds for the motor carrier safety operations and grants to the States come from the highway trust fund rather than from regular appropriations. What is the reason for the change?

Ms. HALE. Motor safety—trucks and the buses pay part of the user fees, and they ought to be able to reap the benefits of that. Safety is an issue for those trucks and the buses that are on those highways, and we think that it is a benefit that we ought to be funded from the trust fund.

Because of our concerns about safety, contract authority allows a constant stream of payment.

Senator PACKWOOD. Do you think the budget cuts proposed next year, whether it is Gramm-Rudman or the President's budget are going to require you to change any priorities, or will you be able to function adequately under those budget levels?

Ms. HALE. We do not anticipate changing any of our priorities. Secretary Dole and the administration are terribly concerned about safety, and we have made sure, as we have presented our budget, and we are sure as we take the Gramm-Rudman cuts, that there is no safety impact to any of those.

Senator PACKWOOD. I know there are two areas where she has felt quite strongly—safety, and especially aviation safety, and the Coast Guard. She is proposing transferring funds from other areas in the Department to those two. What programs do you think can be trimmed or curtailed a bit in order to accommodate both the Coast Guard and aviation safety?

Ms. HALE. Mr. Chairman, it is premature for me to say anything about what is actively under discussion. We have a reprogramming request, or a supplemental request, at OMB right now, and we are discussing that very issue. Whichever programs we touch, it will not impact safety and it will not at all impact the operations of those modes.

Senator PACKWOOD. How are you coming on Union Station?

Ms. HALE. I am not particularly familiar with it at this point, Mr. Chairman.

Senator PACKWOOD. I have no other questions. You will sail through this committee with no difficulty, I am sure, and through the Senate. I wish you good luck.

Ms. HALE. I appreciate your time, sir.

Senator PACKWOOD. Thank you.

[Whereupon, at 10:20 a.m., the committee adjourned.]

[The following information was subsequently received for the record:]

PREHEARING QUESTIONS OF THE MINORITY AND THE ANSWERS OF MR. LAMBOLEY

Question. You are being nominated for another term at the Interstate Commerce Commission. How would you characterize your impact on transportation regulation during your past term? Did the Commission accomplish what you wanted it to?

Answer. During my tenure at the Commission, I have worked with my colleagues in continuing efforts to monitor and refine implementation of the transportation legislation passed during the early 1980's. Sensitivity to the changing public and industry needs in dynamic markets has resulted in Commission adjustments of its regulatory oversight, with particular emphasis and encouragement of negotiated and market-based activity.

Along with my colleagues, I can point to a variety of accomplishments and positive influences such as:

(1) Restablishment of harmonious, collegial working relationships;

(2) Encouragement of open Commission meetings, oral arguments and voting conferences;

(3) Reexamination of Commission procedures for hearing and discovery;

(4) Efforts to communicate and outreach to parties and industries interested in Commission activity;

(5) Revitalization of the ICC's National Defense Executive Reserve unit consistent with the ICC's functional role in national security and civilian emergency preparedness;

(6) Focused attention on the need to study and encourage communiction between transportation and insurance industry representatives concerning liability insurance issues, as well as foster coordination with State Insurance Commissions on questions of basic premium/clims data, availability/affordability procedures and alternatives for obtaining insurance; and

(7) In general terms, participation in Commission cases developing substantive policies which actively encourage market competition, negotiations and problem solving, but recognizing the role of the Commission to be a forum for timely and effective dispute resolutions in limited instances in which market forces fail.

It is my intent to continue to influence Commission progress in these areas.

Question. If confirmed for another term, what would you like to see accomplished by the Commission in the near future? What do you think should be the priorities of the Commission?

Answer. The commission has several rate reasonableness cases pending. With the adoption of the coal rate guidelines, these cases are a priority matter for Commission decision. Equally as important is the fact that the Commission now believes that our existing standards and procedures for determining revenue adequacy are not producing realistic results. Accordingly, a broad reevaluation of present standards, including cost of capital, should be a top Commission priority.

Further, in a larger perspective, the transportation factor in both Energy and Export/Import related activities requires more focused attention to ensure an effective competitive environment for American industries.

Moreover, the concerns for market position/share of carriers and Federal-State relations will continue as significant issues.

Question. As you are aware, the Committee recently held hearings on S.477, legislation to amend the Staggers Rail Act. Proponents of the legislation argue that it is necessary because the ICC has not implemented the Act as was intended. What is your response to this view? Do you think that the legislation is necessary?

Answer. In my view, the case has not yet been made to support legislative change of the Staggers Act, particularly in light of the Commission's developing transportation policies under the Act. This is not to say, however, there are not valid criticisms or opposing points of view. The provisions of S.477 do reflect the criticisms of the initial implementation rules where developments have shown that they have not worked satisfactorily. In the areas of market dominance and competitive access, the Commission has revised its policies, reflecting wherever possible, negotiated settlements between disputants that are consistent with the public interest. This is an ongoing process, and the Commission has further refinements under active consideration, particularly on the critical subject of revenue adequacy. The Commission will now further address procedural concerns for hearings and discovery/discolsoure. Active sensitivity to these problems, together with refinements by the Commission to its regulations, is to me preferable to the adoption of new legislation at this time.

Question. One of the provisions in S.477 would alter the way the Commission currently computes revenue adequacy. Do you think the current revenue adequacy determination needs to be changed and if so, why and how? How would you classify the railroad's financial picture at this time?

60-129 O - 86 - 2

Answer. Based on recent determinations it appears that existing standards and procedures for measuring revenue adequacy are not producing a realistic picture of the financial condition of the rail industry. Comparison of Commission revenue adequacy findings since 1980 shows a decline in the economic health of most of the major carriers. This is inconsistent with the general perception shared by the government, the rail industry, the shipping public, and the investment community, that the financial condition of the railroads has improved substantially since passage f the Staggers Act. The Commission has therefore generally concluded that our present standards should be broadly reassessed.

I consider reexamination of the standard(s), the asset base and accounting methods to be a top priority for the Commission, particularly since revenue adequacy considerations so permeate rail-related issues.

Although revenue adequacy current findings may be flawed, the railroad industry reported a return on investment of 5.92 percent (%) in 1984, the highest in forty years. Implementation of the Staggers Act rate and cost recovery provisions, and the consequent ability of railroads to respond more quickly and efficiently to shippers' needs with innovative rates and improved service levels, has contributed to improvement in earnings. These factors, together with the consummation of various major railroad mergers have all contributed to strengthening the financial condition of the railroad industry.

Question. Another concern raised bout the ICC rail regulation is the recently issued coal rate guidelines and specifically the inappropriateness of using standalone costs as a constraint on coal rates. What is your view of the concerns that have been raised about the coal rate guidelines? Will these guidelines be an edequate constraint on coal prices?

Answer. The "Constrained Market Pricing" (CMP) approach adopted by the Commission in Ex Parte 347 (Sub-No.1),*Coal Rate Guidelines*, is designed to provide the necessary protection for captive shippers, and at the same time, to allow the railroads the opportunity to earn adequate revenues. To effectively do so means that we must (1) encourage market based solutions in circumstances in which there may not be effective competition, and (2) provide practical, common sense guidelines upon which principals in various industries affected reasonably rely. Encouragement of market based solutions requires that reasonable incentives exist for the parties to reach common ground through mutual accomodation of interests.

However, to the extent that the marketplace does not provide adequate incentive, a third party may be called upon for dispute resolution. Indeed, the fact that a third party's decision may please neither or none of the parties may itself be considered a partial incentive. While uncertainty in resolution may offer some incentive to achieve solutions, it is of little value in guidelines which impact significant short-term and long-term business planning and commitment of resources.

It is hoped that in Ex Parte 347 (Sub-No.1) proceedings, we have achieved a balanced statement of policy with sufficient clarity for purpose of business decision making, and also provided procedures and potential remedies that are efficient and practical.

It must be remembered these are but guidelines - a framework for case adjudications. Commission implementation will be the litmus test, the key and critical factor of how well these guidelines work and how they should be measured.

Of particular concern is the timeliness and cost impact of these dispute resolution procedures. Therefore, proceedings under these guidelines will be monitored accordingly. Equally important is access to information. Consequently, the fairness and adequacy of discovery should likewise receive careful attention in these cases.

Question. S.477 would shift the burden of proof in rate reasonableness cases from the shippers to the railroads. Do you believe that shippers now have an unreasonable burden of proof in rate cases?

Answer. Burden of proof issues are admittedly difficult because what is typically at stake is not simply who has to carry the weight of logic and evidence, but who has to carry the weight of expense. Because railroad rate cases can become very technical, this issue of expense is a serious problem, and acutely so, for smaller shippers. The Commission is currently preparing a notice of proposed rules addressing this problem, as well as the issue of non-coal standards.

In general, I do believe that complainants should bear the ultimate burden of proof or persuasion, but after a prima facia showing on elements essential for recovery, can effectively shift the burden of going forward to respondent, and that showing, if not rebutted, should be sufficient to entitle complainant to decision in its favor.

Moreover, the burden of proof concerning specific issues may be allocated as a matter of policy by statute, rule or decision.

Question. One impetus behind S.477 is a concern that rail shippers have no access for redress at the ICC. How do you respond to this concern?

Answer. The Commission is obligated to effectively weigh and balance the legitimate interests of both shippers and carriers. The proceedings involving competitive access, market dominance and revenue adequacy are examples and evidence that progress has been, and will continue to be, made at the administrative level. I believe the Commission can provide an important and impartial forum for implementation of transportation policy under the act and resolution of disputed issues.

Question. As you know, there is support from the Administration and others for the complete deregulation of the motor carrier industry. What is your view of this proposal? Are there areas where continued motor carrier regulation is necessary? In what areas do you believe the Commission is effectively regulating motor carriers, now?

Answer. In implementing the Motor Carrier Act of 1980, the Commission has continued vigorously to reform and minimize economic regulation of the motor carrier industry in accordance with Congressional intent and the National Transportation Policy. The Motor Carrier Act was a major first step toward a deregulated transportation market. It introduced greater competition into the motor carrier industry, and allowed carriers to operate in a less regulated environment. In addition to the greater selection of carriers from which to choose, shippers have more price/service options as a result of the flexibility afforded to motor carriers. These reforms were an excellent beginning and continued economic regulation may no longer serve a meaningful function.

Although there is less need for economic regulation there however remains continuing concern for motor carrier safety and insurance. In addition, the recent bankruptcies and acquisitions give rise to concerns for market concentration, as well as collection practices involving negotiated rates.

Question. The Commission has initiated an investigation into the current insurance crisis affecting the motor carrier industry. What do you hope would come out of this proceeding? Are there ways in which the ICC could alleviate this crisis?

Answer. Motor carriers of property and passengers have faced significant increases in premiums to retain existing property and bodily injury insurance coverage. Further, new carriers have had difficulty in obtaining statutorily required minimum insurance amounts. Short line rail carriers are being similarly impacted. These problems have resulted in some carriers going out of business, operating without insurance, or not being able to enter and/or compete in the transportation marketplace.

These results are at odds with the National Transportation Policy, which encourages development of an economically sound and safe transportation industry.

It is my hope that the Commission will serve as an active forum for all interested parties, including carriers and insurance industry representatives, to exchange information, present their views and analysis of the underlying problems, and ultimately agree and recommend alternatives, both short and long-term, to alleviate the pressing concern. The multi-faceted problem will require a variety of approaches. There is no single answer, but there are some options to consider for the marketplace, and others for administrative and legislative consideration in Federal and State forums.

Question. The Administration has proposed the abolishment of the ICC and a transfer of functions to the Department of Transportation. What is your view of this proposal? Do you believe that an independent agency to regulate transportation is necessary?

Answer. The decision regarding the future of the ICC lies with Congress. Thus, as a Commissioner, I am reluctant to become involved in the debate which tends to undermine both the morale of the agency employees and the credibility of the agency's handling of its responsibilities which are of paramount importance to the integrity and effectiveness of an independent agency.

Question. In the motor carrier area, the ICC coordinates regulatory efforts with the Department of Transportation particularly with respect to safety. The Ranking Democrat on the Committee introduced legislation last year to create a Motor Carrier Administration within DOT. What is your view of this proposal?

Answer. I generally believe that the establishment of a Motor Carrier Administration within the Department of Transportation would be appropriate so long as the modal administration would not become a potential vehicle for establishment of regulation or agency growth which is not necessary or required.

Question. Over the last few years, there has been much concern that the conflicts among the ICC Commissioners were precluding responsible and responsive decisions by the Commission. How do you believe the ICC is functioning now?

Answer. The Commission is working together in a sincere effort to remain sensitive to changing regulatory demands and the fluctuating needs of the transportation industry and the shipping public. In a dynamic market environment, this effort is critical in order to balance the numerous and competing interests of the National Transportation Policy. My colleagues and I take seriously this responsibility.

I firmly believe there is a commitment among Commissioners to harmonious, collegial working relationships, and there is ample evidence of that fact. In my view, we have demonstrated that the ICC is an active, working Commission, in its hearings, arguments, voting conferences, and most importantly, its decisions. I anticipate that progress will continue.

PREHEARING QUESTIONS OF THE MINORITY AND THE ANSWERS OF MR. SIMMONS

Question. You are being nominated for another term at the Interstate Commerce Commission. How would you characterize your impact on transportation regulation during your past term? Did the Commission accomplish what you wanted it to?

Answer. For the most part, I have tried to promote a blanced posture on the Commission, sincerely weighing the legitimate needs of carriers, shippers, and the public. I have worked to reduce administratively unnecessary regulations and to impose only those regulations which the Commission finds necessary. On a few occasions, I have however, opposed deregulation when it was clear that the public interest weighed heavily in favor of continued ICC jurisdiction. For example, I opposed deregulation of export coal and the original blanket boxcar exemption. Furthermore, I have not favored granting abandonment requests when it was demonstrated that the interests of shippers and communities outweighed any burden on the railroad of maintaining a line.

In my last confirmation hearing befor the Committee, I promised that I would work vigorously with my fellow Commissioners to address those issues of pressing interest to the transportation industry and the public. During my tenure this Commission has attempted to adopt solutions which were generally fair to all concerned and which advanced our national transportation goals. I have supported holding more open voting conferences among the Commissioners and will continue to do so in the future. Additionally, I have encouraged my fellow Commissioners to give greater weight to national security and domestic energy policies in our deliberations.

Question. If confirmed for another term, what would you like to see accomplished by the Commission in the near future? What do you think should be the priorities of the Commission?

Answer. The Commission's near-term goals should involve the establishment of viable procedures for the resolution of maximum rate complaints. First, we must expedite our decisions in the long-pending coal rate complaints under the Staggers Act savings provision. Second, in the process of deciding these cases, we must implement our coal rate guidelines with an eye to instilling confidence in their workability and fairness for all involved parties. Third, the Commission should use the experience of the coal rate cases to help in the establishment of viable maximum rate procedures for all captive shippers. Finally, we must complement these efforts with a reconsideration of our revenue adequacy standards.

The Commission's priorities should include considerations which are broader than its usual concerns in everyday decisionmaking. In all of our work, we must attempt to dispel the current perception in some circles that the Commission is unresponsive to the interests of various groups. To this end, I think we should have more open decisionmaking, including greater use of oral hearings and open voting conferences.

Longer term priorities should be to increase the Commission's awareness of national security concerns and to examine the possibility of establishing an industry advisory committee. Such a committee could provide general information to the Commission in the context of overall industry concerns and problems rather than in specific disputes where such problems have already manifested themselves.

Question. As you are aware, the Committee recently held hearings on S. 477, legislation to amend the Stagers Rail Act. Proponents of the legislation argue that it is necessary because the ICC has not implemented the Act as was intended. What is your response to this view? Do you think that the legislation is necessary?

Answer. while I strongly support the two basic objectives of S. 477 - protection for shippers and increased rail competition - I believe the Staggers Rail Act already provides the framework to achieve these goals. Nevertheless, I am aware that many shippers and even some railroads have felt this Commission has not always been responsive to their needs and interests.

The present regulations implementing Staggers, however, are not etched in stone. I have been receptive to amendments when current regulations appear unreasonable or unrealistic. For instance, I have favored proposals which place the burden of proof in certain market dominance determinations on railroads and which seek to make it easier for shippers to obtain competitive access. I feel the continuing process of reviewing and amending our current policies is preferable to passage of new legislation.

Question. One of the provisions in S. 477 would alter the way the Commission currently computes revenue adequacy. Do you think the current revenue adequacy determination needs to be changed and if so, why and how? How would you classify the railroads' financial picture at this time?

Answer. It seems clear to me that the Commission's current standards and procedures for determining revenue adequacy are not producing an accurate picture of the financial condition of the railroads. We now have five years's experience under the present methodology. Although the investment community, the shipping public, and many members of the rail industry share a belief that the industry's financial health has improved significantly under the Staggers Act, the Commission's annual revenue adequacy determinations continue to show a decline in the condition of most major carriers. No major rail carriers are even close to attaining revenue adequacy under Commission standards. This discrepancy between Commission findings and the almost unanimous opinion of other interested parties strongly suggests that our current methodology is flawed.

Last month i voted to instruct the Commission's Bureau of Accounts to prepare a broad options paper covering the relevant issues and areas of controversy for submission to the Commission during the first week of April. Following voting on the options, I would hope that adoption of any changes could be completed by late summer or early fall. The goal of this undertaking is of course to develop more realistic standards and procedures for the Commission's annual revenue adequacy determinations. Two areas to which I will devote particular attention are the treatment of deferred taxes and the use of current versus embedded debt rates.

In my view, the major Class I rail carriers are in generally good financial condition. Certain regional Class I carriers face specific problems, and the condition of the smaller Class II and III carriers varies with their individual circumstances. The overall condition of the rail industry has improved greatly since passage of the Stagers Act.

Question. Another concern raised about the ICC l regulation is the recently issued coal rate guidelines and specifically the inappropriateness of using stand-alone costs as a constraint on coal rates. What is your view of the concerns that have been raised about the coal rate guidelines? Will these guidelines be an adequate constraint on coal rates?

Answer. The concern expressed over the Commission's recently issued coal rate guidelines was not unexpected. Given the difficulty experienced during the last ten years in developing workable and judicially acceptable standards for maximum coal rates, and the technical aspects of the guidelines finally adopted, some adverse reaction was inevitable. I voted to adopt the Ex Parte No. 347 (Sub-No. 1) guidelines for two reasons. First, I sincerely believe they can be applied in an equitable and efficient manner that will provide a meaningful constraint on coal rates. Secondly, it was essential to get moving on the coal rate complaints which have been pending for such a long time at the Commission.

Stand-alone cost is only one of four constraints on coal rates in the Commission's guidelines. This factor, together with revenue adequacy (the standards for which the Commission will soon readdress), the Long-Cannon efficiency considerations, and the possibility of phasing-in any otherwise lawful increases in coal rates, of course will take on meaning as they are applied in individual cases. I intend to apply them so as to provide meaningful protection for captive coal shippers. If it appears that the guidelines are not working, or if the costs of presenting a case under the guidelines prove to be prohibitive for small shippers, I will support any necessary changes.

In a separate comment in the decision adopting the guidelines, I have already indicated the seriousness with which I view the captivity problem of many coal shippers. I also stated in that comment that I will take a very hard look at the need for phasing-in of any rate increases in order to promote the use of domestic energy resources and to avoid unnecessary economic disruptions. I believe this and the other constraints can be applied so as to give full effect to the various policies embodied in the Staggers Act.

Question. S. 477 would shift the burden of proof in rate reasonableness cases from the shippers to the railroads. Do you believe that shippers now have an unreasonable burden of proof in rate cases?

Answer. I do not believe that shippers now have an unreasonable burden of proof in rate cases. If I am confirmed, I am committed to doing all that I can to make the shippers' burden a realistic one, including allowing discovery to insure that the Commission's coal rate guidelines will work effectively. However, I realize that the burden of proof for shippers (especially small shippers) in our maximum rate procedure can be complicated and expensive to bear. One possible solution to this problem could be a shift of that burden to the railroads. I am not prepared to endorse such legislation at this time, but if Congress concludes that this change is warranted, I will work to see that it is fully implemented.

Question. One impetus behind S. 477 is a concern that rail shippers have no access for redress at the ICC. How do you respond to this concern?

Answer. I am sensitive to the interests of all rail shippers and I have always tried to reflect that sensitivity in my decisions. I believe my record at the Commission gives ample evidence of this. My votes in several abandonment applications as well as my position on the export coal exemption are examples.

With regard to the Commission as a whole, I think it has been difficult to reach that critical balance of shipper and railroad interests that was envisioned by the framers of Staggers. The Staggers Act was, first and foremost, a means to extricate the railroads from their deplorable financial straits. During the last five years, the Commission admittedly has been most concerned with this task. But, I sincerely believe that the Commission's future decisions must (and will) achieve the balance that Staggers intended. Recent actions, including establishment of new competitive access rules and a shifting of the burden of proof on product and geographic competition in market dominance determinations, show increasing sensitivity to the very real problems of rail shippers. Most recently, the Commission has voted to undertake a broad reexamination of the revenue adequacy standards.

Question. As you know, there is support from the Administration and others for the complete deregulation of the motor carrier industry. What is your view of this proposal? Are there areas where continued motor carrier regulation is necessary? In what areas do you believe the Commission is effectively regulating motor carriers now?

Answer. As a former owner of a small business, I am in favor of making the regulatory burden on business as light as possible. Heavy economic regulation unquestionably costs money for business as well as the public. However, I am concerned with abrupt change in the regulatory scheme which can also cause hardship and cost money, especially for small businesses. While total economic deregulation of the motor carrier industry is probably inevitable at this point, I would like to see some sort of orderly transition that would allow necessary adaptation to the new business environment.

Continued motor carrier regulation is necessary with regard to safety and insurance. Also, certain constituencies would seem to require continued protection in a deregulated environment. These include individual bus riders and users of household goods movers which have very little or no leverage in the marketplace. Similarly, owner-operators are at a considerable disadvantage because to a large extent, they rely for their livelihood upon the large carriers which "make the rules."

The Commission is now conducting a very effective insurance program for the motor carrier industry. Even in the present unsettled state of the insurance industry, this program has worked well in assuring that motor carriers do *not* operate without adequate insurance.

Question. The Commission has initiated an investigation into the current insurance crisis affecting the motor carrier industry. What do you hope would come out of this proceeding? Are there ways in which the ICC could alleviate this crisis?

Answer. In the Ex Parte No. MC-178 proceeding, I hope to learn more about the scope of the insurance problem facing carriers, its causes, and any possible steps the ICC may take to ease the problem. I hope the parties themselves will suggest alternatives, such as self-insurance, which may alleviate the problem. I believe that the current insurance crisis has the potential to jeopardize implementation of our national transportation policy. For this reason, the Commission has a duty to seek comments and advice on what it might do, if anything, to assist in resolution of the crisis.

Recently, May Trucking Company sought our permission to become self-insured. Because of various inadequacies in the May proposal, the Commission tentatively denied the request, but suggested to the carrier that it might file again under certain conditions. In my vote on the May application, I recommended that the Commission reassess its current self-insurance regulations to determine if they are adequate to meet the current situation. A majority of the Commission agreed to my proposal.

Self-insurance may be a solution for some carriers, but it clearly is not a complete answer to the insurance crisis. Our study of this problem may reveal that legislative action is necessary.

Question. The Administration has proposed the abolishment of the ICC and a transfer of functions to the Department of Transportation. What is your view of this proposal? Do you believe that an independent agency to regulate transportation is necessary?

Answer. I am unequivocably opposed to the Administration's proposal to abolish the ICC and transfer the remaining functions to the Department of Transportation. I believe Congress has been correct in the establishment of Independent Governmental agencies where it has deemed that it was absolutely necessary to obtain independent and objective opinions by Commissioners appointed for a specified term rather than policies dictated to a Cabinet level agency by the administration that happens to occupy the White House. I remain unconvinced that the Department of Transportation personnel can do a better job than the employees currently working at the Commission. In any transfer of functions from the Commission, more than likely some of the Commission's finest and most knowledgeable employees would opt out and go to work for the private transportation industry.

In my twenty-five years in Washington, each time that I have seen transfers of personnel from one agency to another, usually the resulting department has grown three or four times its original intended size. Classic examples have been the creation of DOT, DOE and HHS. Their records of economy have not been exemplary.

Question. In the motor carrier area, the ICC coordinates regulatory efforts with the Department of Transportation particularly with respect to safety. The Ranking Democrat on the Committee introduced legislation last year to create a Motor Carrier Administration within DOT. What is your view of this proposal?

Answer. I support creation of a Motor Carrier Administration within DOT. Other regulated transportation modes, and specifically the railroads, are already represented within the department in individual organizational units. It seems to me that according similar status to motor carriers would promote the consideration and adoption of balanced surface transportation policies by DOT.

I want to make clear that my support for this proposal does not indicate a belief that the ICC is an inadequate forum for the consideration of legitimate motor carrier interests. The current coordination of motor carrier regulatory efforts with DOT works well, and I do not favor shifting additional responsibilities from the ICC to DOT. In fact, to the extent a Motor Carrier Administration would "promote" the interests of the industry, separation of promotional activities at DOT and regulatory activities at the ICC may take on increased importance.

Question. Over the last few years, there has been much concern that the conflicts among the ICC Commissioners were precluding responsible and responsive decisions by the Commission. How do you believe the ICC is functioning now?

Answer. I truly believe that no conflicts, personal or otherwise, currently exist among the ICC Commissioners that preclude responsible and responsive decisions by the Commission. All five Commissioners enjoy a friendly and respectful relationship.

PREHEARING QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS OF MS. HALE

Question. The Administration has proposed the elimination of federal funding for Amtrak in fiscal year 1987. The elimination of federal funds for Amtrak would mean the discontinuation of a national rail passenger system as we know it, unless non-federal funds can be secured for the system. Would you envision the Department taking any initiative to seek non-federal sources to fund the Amtrak system?

Answer. The Department plans to take several initiatives to make elimination of Federal funding of Amtrak work as well as possible and to encourage states, local governments, communities and other parties to fund rail passenger service. For example, we have under consideration development of model legislation to facilitate formation of interstate compacts or agreements which may be needed if states are to work together to support passenger service. Also we will request northeastern and other states to meet with us to discuss ways that the Federal role of funding Amtrak can be assumed by those states who decide it is necessary to continue to keep rail passenger service going.

Question. The Administration has proposed that beginning in fiscal year 1987, funds for motor carrier safety operations and grants to states would come from the Highway Trust Fund. What is the reasoning behind this proposal? Does this proposal mean a strengthened motor carrier safety effort?

Answer. We are proposing to fund the operations of the Bureau of Motor Carrier Safety from the Highway Trust Fund because trucks and buses pay user fees to the Highway Trust Fund and because the benefits of Bureau of Motor Carrier Safety operations accrue to all highway users.

The precedent for this has been set in the case of Motor Carrier Safety Grants, which are currently financed from the Highway Trust Fund. We are proposing in FY 1987 for the first time that Motor Carrier Safety Grants also be funded with contract authority. This will provide a greater predictability of funding which should improve motor carrier safety planning at the state level.

The funding we are proposing is part of a larger cooperative effort with the states and industry to improve motor carrier safety. Increased funding for Bureau of Motor Carrier Safety operations, from $13.9 million in FY 1986 to $19.5 million in FY 1987, will be used to fund an additional 150 safety specialists in the field, with recruiting to start this year. Increased funding for Motor Carrier Safety Grants, from $16.3 million in FY 1986 to $50 million in FY 1987, will be used to recruit and train state inspectors to increase roadside inspections, and to increase the number of safety compliance audits.

Question. As the Gramm-Rudman-Hollings deficit reduction measure is implemented in the coming years, do you expect that the priorities within the Department of Transportation will change? If so, how?

Answer. The Department's priorities are not likely to change under Gramm-Rudman-Hollings. We expect to be able to continue funding activities which are considered to be high-priority items. These include programs, regardless of funding sources, which emphasize transportation safety or security or are otherwise in the National interest. Programs primarily of local interest and not supported by user fees will have to be cut back or eliminated to achieve deficit reduction targets.

Question. More specifically, Secretary Dole has proposed transferring funds from throughout the Department to protect aviation safety and Coast Guard operations from severe funding cuts. What programs do you feel should be cut in order to accommodate these priority activities?

Answer. This issue is currently under discussion within the Administration, and it would be premature to mention any particular items. We expect the Secretary to arrive at a decision shortly, and after approval by the White House, we will move expeditiously to send a package to the Congress.

Question. The FY 1987 budget proposed $7 million for capital development at Washington Metropolitan Airports. The Congress is currently considering Secretary Dole's proposal to transfer these airports to a local authority. Should this proposal fail, do you foresee that the Department will request additional funds for the improvement of National Airport and the addition of a new terminal at Dulles?

Answer. We are still confident that Congress will pass the proposed legislation to transfer National and Dulles to an independent authority during FY 1986. After the legislation has passed, the members of the Airport Authority Board must be appointed and the terms of the lease negotiated with the Department of Transportation. We anticipate that these negotiations will take about a year -- through FY 1987. The $7 million we are requesting for FY 1987 will maintain the facilities this last year before transfer. If the legislation is not enacted or negotiations carried beyond FY 1987, we will have to reassess the funding situation for FY 1988 and beyond. We do not, at this time, intend to request additional funding for FY 1987.

Question. Would you support the creation of a Motor Carrier Administration within the Department of Transportation? Has the Department performed any preliminary analysis of the cost of such an Administration? If so, what would the cost be?

Answer. During the past few years, the Administration has considered various ways to improve the effectiveness of the Federal motor carrier safety programs, including establishing a separate Motor Carrier Administration. The Secretary recently decided that this could best be done strengthening the current organizational structure, rather than establishing another Administration. The cost of establishing a separate Administration is estimated to be over $2.6 million per year and would require 50 new people to assume functions that are now shared within the Federal Highway Administration (FHWA). This cost is nearly 20 percent of the Bureau of Motor Carrier Safety (BMCS) operating budget. I believe that it is a significant price to pay for a proposal that would not get a single additional safety inspector on the job.

The Secretary, in her concern with improving motor carrier safety, has taken several important steps. Last year a new Associate Administrator for Motor Carriers was created, and the Director of the Bureau of Motor Carrier Safety now reports to him. BMCS's field staff no longer report to the Regional Highway Administrators,

but rather directly to BMCS headquarters. BMCS is conducting a comprehensive review of its Federal Motor Carrier Safety Regulations. The Secretary is proposing to double the number of BMCS's safety specialists in the field, by adding 150 over two years, and to focus their efforts on identification and improvement of motor carriers with poor safety records. And, our Surface Transportation Reauthorization proposal would provide $50 million in contract authority for Motor Carrier Safety Grants. We are working closely with the States and the motor carrier industry on these initiatives. We believe our efforts can significantly improve motor carrier safety.

Posthearing Questions of Senator Kassebaum and the Answers of Mr. Lamboley

STAGGERS ACT

Question. The Interstate Commerce Commission is responsible for implementing the Staggers Rail Act of 1980. This legislation significantly deregulated the rail transportation system in this country. You have served on the Commission since 1984. What is your overall impression of the job done by the ICC in interpreting the Staggers Act and developing procedures to implement it?

Answer. In my view, the ICC has done a responsible job. The case has not yet been made to support legislative change of the Staggers Act, particularly in light of the Commission's developing transportation policies under the Act. This is not to say, however, that there are not valid criticisms, or opposing points of view, touching on the initial implementation rules where evidence now suggests not all approaches have worked satisfactorily.

In the areas of market dominance and competitive access, the Commission has revised its policies, reflecting wherever possible, negotiated settlements between disputants that are consistent with the public interest. This is an ongoing process, and the Commission has further refinements under active consideration, particularly on the critical subject of revenue adequacy. Also, the Commission will now further address procedural concerns for hearings and discovery/disciosure. Active sensitivity to these problems, together with balanced refinements by the Commission to its regulations, whould provide the guidence and opportunities anticipated by all interests under the Act.

Question. Section 208 of the Staggers Act permitted a broad use of contract rates between shippers and railroads. However, specific and special protection was afforded small agricultural shippers who Congress felt could be competitively disadvantaged by a contract environment. How has the Commission attempted to provide that protection to smaller shippers? Can you give me any specific procedures or regulations which have implemented the spirit of 49 U.S.C. 10713(d)(2)(B)?

Agricultural shippers have a statutory right under Staggers to file a complaint against a particular contract alleging that the contract constitutes "unreasonable discrimination" or a "destructive competitive practice." Congress believed such a right was necessary and could be asserted because the "essential terms" of a rail contract would be disclosed to the public as nonconfidential information. Please describe for me the Commission's development of the statutory phrase "essential terms" and explain why such items as the identity of the shipping party, the contract rate, the specific origination point, and any transit points are not "essential terms."

Answer. The historical development of the Commission's approach to implementation of 49 U.S.C. 10713(d)(2)(B) (Section 208 of the Staggers Act) is chronicleled by the Court of Appeals in *Water Transport Association* v. *Interstate Commerce Commission*, 722 F2d 1025 (2nd Cir. 1983) and in the subsequent remand proceeding before the Commission in Ex Parte No. 387 *Railroad Transportation Contracts*, served July 13, 1984. For information, attached are copies of those decisions, including the original *Ex Parte No. 387* decision from 367 I.C.C. 9 (1982).

Presently under consideration by the Commission is an agreement jointly submitted by AAR and the National Grain & Feed Association regarding raw grain and soybean commodities proposing adoption of new rules to be denominated as Section 1312.42, and a notice of proposed rule making inviting public comment.

I have reviewed prior decisions, including the joint comments of yourself and Senator Dole, and am currently reviewing the AAR/NFGA submission.

In the pending cases it is anticipated that the Commission will examine the appropriateness of its present rules regarding disclosure and discovery.

Question. Thousands of contracts are filed each year with the Commission. Thousands of nonconfidential summaries are made available to the public. How can small grain shippers in Kansas determine whether a particular contract "affects" their business given the limited information available today in the nonconfidential summary?

Answer. Since joining the Commission, I have participated in cases involving contract filing, tariff information disclosure and discovery issues in which I have expressed the view that Commission rules are perhaps too restrictive, basically concluding in each instance that: "Fair access to accurate information is a premium no matter the forum, be it in the marketplace or in litigation." See for example separate expressions in:

Ex Parte No. 387 (Sub-No. 958) (Notice of Contract Filing), exemption from regulation—shipments subsequently made subject to a contract rate (Decided: November 20, 1985).

Ex Parte No. 370: (Tariff Information), tariff improvement (Decided: February 4, 1985).

No. 39498: (Tariff Information), *Olin Corporation* v. *Burlington Northern Railroad Company, et al.* (Decided: September 13, 1985).

No. 37021: (Discovery), annual volume rates on coal - rawhide junction, WY, to sergeant bluff, IA.

No. 37029: *Iowa Public Service Company* v. *Burlington Northern Railroad Company and Chicago and North Western Transportation Company* (Decided: March 11, 1985).

Copies of these decisions are attached for reference and are the Committee files.

Question. I have reviewed several examples of the nonconfidential summaries released by the Commission. Assume a contract summary states that it applies to wheat originating from any of a railroad's origins in Kansas for shipment to a Gulf port. Further assume that there is no additional identification of any specific origin or destination point (as is permitted under current ICC rules). On these assumed facts, could you tell me:

a. Would a Kansas shipper that sells wheat to Gulf ports be affected by the contract?

b. Without identifying a specific point, transit point, or shipper, how can a Kansas shipper determine whether the contract applies to another shipper near his location or to a shipper located across the state?

Answer. This question outlines limited information from which it would be admittedly difficult to determine the impact of a contract on a particular Kansas shipper.

Question. The Association of American Railroads and the National Grain and Feed Association have proposed a modification of the Commission's contract disclosure rules. Can you tell me, in detail, how today's standard contract summary would be changed under the proposed AAR/NGFA agreement?

Answer. The AAR/NGFA agreement represents a case presently pending before the Commission.

Accordingly, I must decline specific comment. I can, however, provide the rules agreed upon and submitted to the Commission which contain the proposed modifications in relation to existing Rules of Section 1312.41.

Question. The AAR/NGFA agreement purports to eliminate the use of "broad geographic descriptions." However, the agreement would permit the use of such origin descriptions "to the extent that those terms actually are used in the contract." Is it possible that shippers and railroads seeking to avoid disclosure of a contract which could be callenged as discriminatory or competitively destructive could use this language, if adopted by the Commission, to avoid identifying *any* specific origin points? Wouldn't this leave all small shippers in the same unfortunate position as today?

Answer. Unless the contrary is shown it must be assumed the AAR/NGFA agreement was reached in the spirit of, and in anticipation of, continuing good faith and cooperation in a problem-solving effort. It is the Commission's responsibility to determine whether it satisfies statutory public interest considerations.

Moreover, it is appropriate to observe that submission of an insufficient summary serves to emphasize the need to allow discovery. It is fairly obvious that disclosure and discovery are two sides to the same informational coin.

Question. Isn't it true that today's contract summaries offer no practical benefit for small agricultural shippers who are attempting to determine whether a contract affects their business, especially given the time and expense which must be devoted to complying with ICC rules? How can it be argued that the Commission has made available the protection for small shippers which was explicitly promised in Section 208 of the Staggers Act?

Answer. The conference report leaves little doubt that Congress was concerned about the market position of small shippers.

Consistent with statutory mandate the Commission has established a Railroad Contract Advisory Service to assist parties interested in rail service contracts, specifically small shippers.

Moreover, the Commission's evaluation of the AAR/NGFA agreement may offer additional assistance, benefiting small shippers.

Hopefully, we will continue to refine and improve Commission procedures in these areas of concern.

Question. Rail abandonments cause serious dislocations, especially in rural areas where small shippers, grain elevators, and other businesses are often left without transportation alternatives. According to testimony provided the Commerce Committee on February 21, 1986, of the 1,300 abandonment applications filed with the Commission since Staggers only 23 have been denied by the Commission. 1,200 were granted. Many of the abandonments which have been permitted did not involve a formal investigation or hearings in the communities affected by the abandonment. Can you comment on this record. How can we in Congress be assured that the Commission is meeting its responsibility to determine whether an abandonment is "in the public interest" when only 1.9 percent of the applications are denied? Perhaps more importantly, how are small communities and shipping interests represented before the Commission if no investigation or hearings are held in a particular abandonment proceeding?

Answer. It is frankly not possible for me to comment on abandonments decided prior to my joining the Commission in September, 1984.

However, during my tenure, I have examined the record and tried to fairly balance the various interests at stake in abandonment proceedings.

I have expressed concern that oral hearings are more suited to development of the record in contested cases, as opposed to the written submission process of "modified procedure" notwithstanding its "efficiency" appeal.

Further, there is evidence that in cases in which both hearings were scheduled in the locale subject to the abandonment and the Office of Special Counsel has assisted the parties, apparent marketplace compromises and solutions were achieved.

Finally, it should be pointed out that an increasing number of abandonment cases are being investigated.

Question. Rate reasonableness complaints, especially in coal cases, have seemed to drag on intermidably. What confidence should Congress have that the Commission will uphold its promises of faster decisions in these proceedings?

Answer. Presently, there are some twenty (20) coal rate reasonableness cases pending before the Commission. Of those, there are three (3) cases in which the record is closed. These cases are pending analysis of cost evidence by the Bureau of Accounts and although some time may elapse before they are circulated for decision, the entire Commission and staff are aware of the concern and need to expedite adjudication in these as well as other cases.

I believe the Chairman has publicly emphasized the committment to this end.

MOTOR CARRIER ISSUES

Question. Federal insurance requirements have had a dramatic impact on the trucking and bus industries. Although any change in the statutory requirements would have to come from Congress, I understand the Commission is taking action to facilitate insurance coverage for operators. Could you explain your thoughts on the insurance crisis and any actions you believe the Commission should consider to alleviate that crisis?

Answer. The Commission has formally opened an investigation into the liability insurance crisis (Ex Parte MC-178). Recently, the American Trucking Association (ATA) supported by the National Industrial Transportation League (NITL), has requested that as a part of its investigation the Commission sponsor open conferences of industry representatives. Action on the ATA request is pending.

Additionally, pending before the Commission are other case specific insurance related issues in such areas as self insurance and enforcement.

The Commission has previously authorized surcharges to cover rising insurance costs.

For my part, I have, since midsummer 1985, conducted informal meetings between insurance and transportation industry representatives in an effort to establish better communication and understanding of their respective positions, as well as provide exchange of basic information regarding premiums/claims ratios, capacity availability and affordability. For example, the ATA hotline service as to under-

writer availability has been updated in these meetings. In addition, I have maintained contact with the State Insurance Commissions, recognizing their hands-on experience and primary jurisdiction.

As a result of those experiences, it is clear that the crisis has multifaceted causes, is very real and will continue. There is no single approach but a variety of options are potentially available as near-term and long-term solutions in the marketplace, as well as in administrative and legislative forums, both State and Federal.

Emphasis should be placed on the market solutions as having the capacity to be more responsive in the near-term. Otherwise, some businesses may not survive to see the long-term administrative or legislative approaches accomplished.

COMMISSION ISSUES

Question. Over the past several years, the Commission has contributed to a credibility gap through delayed decisions, everchanging standards of review, personality differences, and the like. Could you describe your view of the proper role for a Commissioner and how you believe you can contribute to a smoother functioning of the Commission in the future? How important is the credibility of the Commission to an efficient transportation system in the United States.

Answer. The Commission is working together in a sincere effort to remain sensitive to changing regulatory demands and the fluctuating needs of the transportation industry and the shipping public. In a dynamic market environment, this effort is critical in order to balance the numerous and competing interests of the National Transportation Policy. My colleagues and I take seriously this reponsibility.

I firmly believe there is a commitment among Commissioners to harmonious, collegial working relationships, and there is ample evidence of that fact. In my view, we have demonstrated that the ICC is an active, working Commission, in its hearings, arguments, voting conferences, and most importantly, in its decisions. I anticipate that progress will continue.

Question. The administration has recommended that the Interstate Commerce Commission be abolished and that its regulatory function be transferred to other cabinet-level departments. What are the benefits of maintaining the regulatory functions of the ICC in an independent agency? Are there benefits to consolidating all of the nation's transportation functions under a single umbrella department?

Answer. The ultimate decision regarding the future of the ICC lies with Congress after consideration of a variety of interrelated issues. As a Commissioner, I am reluctant to become publicly involved in the debate which I believe tends to undermine the morale of the agency employees and the credibility of the agency's handling of its responsibilities, both of which, in my view, are of paramount importance to the integrity and effectiveness of an independent agency.

On balance, I tend to favor the functional role of constructive, independent forums.

As markets become more proximate and competitive, closer coordination of transportation related functions is appropriate.

As an example, there is, I believe, improved coordination between the Federal Maritime Commission and the ICC on transportation matters.

POSTHEARING QUESTIONS OF SENATOR KASSEBAUM AND THE ANSWERS OF MR. SIMMONS

STAGGERS ACT

Question. The Interstate Commerce Commission is responsible for implementing the Staggers Rail Act of 1980. This legislation significantly deregulated the rail transportation system in this country. You have served on the Commission since 1984, and also during 1982 and 1983. What is your overall impression of the job done by the ICC in interpreting the Staggers Act and developing procedures to implement it?

Answer. Generally, the ICC has attempted to implement the Staggers Rail Act consistent with Congressional intent. I have not always agreed with certain Commission action, notably the deregulation of boxcar and export coal traffic. Despite some differences, the Commission has worked harmoniously during my current tenure to balance the needs of the railroads and the shippers.

I am aware that many shippers and a few railroads have felt that this Commission has not always been responsive to their needs and interests in implementing Staggers. I believe that the Commission has a duty to consider the legitimate com-

plaints of the shippers. For this reason, I have been and will continue to be receptive to modifications when current regulations appear unreasonalbe or unrealistic.

Question. Section 208 of the Staggers Act permitted a broad use of contract rates between shippers and railroads. However, specific and special protection was afforded small agricultural shippers who Congress felt could be competitively disadvantaged by a contract environment. How has the Commission attempted to provide that protection to smaller shippers? Can you give me any specific procedures or regulations which have implemented the spirit of 49 U.S.C. 10713(d)(2)(B)?

Answer. The final rules adopted in 1982 by the Commission in Ex Parte No. 387, *Railroad Transportation Contracts*, were intended to implement all the provisions of Section 208 of the Staggers Act. Development of these rules involved a difficult balancing of competing interests. On the one hand, Section 208 appeared to contemplate the granting of confidential status to much contract information. Unnecessary disclosures of proprietary information could have chilled exercise of the new freedom to contract which Congress had hoped to encourage through Section 208. On the other hand, Section 208 granted limited complaint rights to shippers of general commodities and to ports, and much broader complaint rights to shippers of agricultural commodities. Meaningful exercise of these rights required the disclosure of sufficient information for shippers to assess the impact on them of a contract filing. The different levels of disclosure for contract summaries involving ports, agricultural commodities, and all other commodities were meant to accommodate the different protest rights granted.

With the exception of rules for discovery of contracts after the filing of a complaint, the Commission's regulations withstood judicial review. Perhaps the court's affirmance of the rules governing information disclosed in contract summaries led the Commission to an erroneous conclusion that these rules had appropriately balanced the interests of all parties. Consideration of the AAR/NGFA agreement will allow the Commission to look at this problem once again.

Question. Agricultural shippers have a statutory right under Staggers to file a complaint against a particular contract alleging that the contract constitutes "unreasonable discrimination" or a "destructive competitive practice." Congress believed such a right was necessary and could be asserted because the "essential terms" of a rail contract would be disclosed to the public as nonconfidential information. Please describe for me the Commission's development of the statutory phrase "essential terms" and explain why such items as the identity of the shipping party, the contract rate, the specific origination point, and any transit points are not "essential terms."

Answer. In its 1982 decision, the Commission's determination of the meaning of "essential terms" was made in the context of deciding what contract information must remain confidential and what contract information must be publicly available if the complaint rights established in Section 208 were to be fully effective. The Commission basically tried to identify the minimum information upon which a shipper could base a rational decision on whether to file a complaint. This information would be made public, and all other information would remain confidential. The Commission may have erred in assessing the minimum information needed to protect complaint rights as a result of overemphasis on confidentiality concerns. If confirmed, I will approach this issue with an open mind.

Question. Thousands of contracts are filed each year with the Commission. Thousands of nonconfidential summaries are made available to the public. How can small grain shippers in Kansas determine whether a particular contract "affects" their business given the limited information available today in the nonconfidential summary?

Answer. Given the amount of information currently available in the nonconfidential contract summaries of rail contracts for transportation of agricultural commodities, it is admittedly not an easy task for small grain shippers in Kansas or other States to determine if the contracts affect them. This difficulty is compounded by the sheer number of contracts filed annually with the Commission. Without minimizing the problem to which you allude, I note that the number of contracts being filed testifies in some respects to the success of the contract rate provisions of Section 208.

As I have stated in response to previous questions, the regulations adopted by the Commission in 1982 attempted to balance two concerns. These are the general policy favoring contract confidentiality and the need of shippers for enough information to make meaningful their statutorily mandated complaint remedies. I dissented in part from the 1982 decision because I felt that the regulations governing contracts involving ports did not make enough information public. It is certainly possible that I should have supported the disclosure of additional information with

respect to agricultural contracts. Although I cannot prejudge the AAR/NGFA agreement, my consideration of that agreement will be made with particular care for the very real needs of small agricultural shippers.

Question. I have reviewed several examples of the nonconfidential summaries released by the Commission. Assume a contract summary states that it applies to wheat originating from any of a railroad's origins in Kansas for shipment to a Gulf port. Further assume that there is no additional identification of any specific origin or destination point (as is permitted under current ICC rules). On these assumed facts, could you tell me:

(a) Would a Kansas shipper that sells wheat to Gulf ports be affected by the contract?

(b) Without identifying a specific point, transit point, or shipper, how can a Kansas shipper determine whether the contract applies to another shipper near his location or to a shipper located across the state?

Answer. (a) In my opinion, any Kansas shipper selling wheat to Gulf ports would be potentially affected by the contract. As such, the shipper should have standing to file a complaint and should be able to obtain access to the underlying contract even under our current contract rules.

(b) I must concede that the absence of specific origin and destination points, transit points, or shipper identification in a contract summary makes it very difficult for a shipper to determine if it is adversely affected by a contract. This in turn certainly impacts the shipper's right to file a complaint. This matter is another issue I plan to study in the context of the AAR/NGFA agreement.

Question. The Association of American Railroads and the National Grain and Feed Association have proposed a modification of the Commission's contract disclosure rules. Can you tell me, in detail, how today's standard contract summary would be changed under the proposed AAR/NGFA agreement?

Answer. The agreement between the Association of American Railroads (AAR) and the National Grain and Feed Association (NGFA) applies to contracts for the transportation of raw grains and soybeans. Changes to the current contract summary requirements for these contracts are as follows:

(a) The summary would disclose the specific commodity or commodities transported under the contract. Generic descriptions such as "grain" could not be used unless the contract itself used those same descriptions.

(b) The summary would identify specific origins and destinations. The use of broad geographic descriptions such as "stations in Kansas" would be prohibited except to the extent such terms actually appear in the underlying contract.

(c) The summary would identify the specific base rates or charges, if any, which are found in the contract. In satisfaction of this requirement, reference to a specific tariff under which the traffic would otherwise move would be permissible.

(d) The contract summary would identify the existence (but not the location, terms, or amounts) of more special features than do current contract summaries. These additional special features which would be identified in the summary are (1) transit points, (2) minimum volume requirements, and (3) the time period(s) for filling any such requirements.

Question. The AAR/NGFA agreement purports to eliminate the use of "broad geographic descriptions." However, the agreement would permit the use of such origin descriptions "to the extent that those terms actually are used in the contract." Is it possible that shippers and railroads seeking to avoid disclosure of a contract which could be challenged as discriminatory or competitively destructive could use this language, if adopted by the Commission, to avoid identifying any specific origin points? Wouldn't this leave all small shippers in the same unfortunate position as today?

Answer. It appears that the scenario you describe could occur under the AAR/NGFA agreement. Shippers and carriers could intentionally use broad geographic descriptions in the contract so that these same descriptions could be used in the contract summary in an attempt to avoid challenges to a discriminatory or competitively destructive contract. Such a strategy, however, would not necessarily be a successful one. Other provisions of the AAR/NGFA agreement require disclosure of additional information in the contract summary, and proposed rule 1312.42(a)(2)(iii)(B)(7) allows discovery of a rail contract on a reasonable showing of potential injury. The disclosure of additional information in the summary, together with the requirement for a showing of only potential injury in discovery requests, could lead to the filing of more complaints and more successful discovery requests than if the contract and contract summary had used very specific geographic descriptions. This is a risk which a shipper and carrier would have to assess before framing a contract with broad geographic descriptions.

Nevertheless, I believe your question raises a valid concern involving the AAR/NGFA agreement. If confirmed, I will be fully mindful of this concern in my assessment of the agreement.

Question. Isn't it true that today's contract summaries offer no practical benefit for small agricultural shippers who are attempting to determine whether a contract affects their business, especially given the time and expense which must be devoted to complying with ICC rules? How can it be argued that the Commission has made available the protection for small shippers which was explicitly promised in Section 208 of the Staggers Act?

Answer. The Commission's current rail contract regulations may not be providing an appropriate degree of protection for small agricultural shippers. I am grateful that the Commission will have an opportunity to readdress this issue in the context of the AAR/NGFA agreement. I also want to assure you that my consideration of the agreement will be made with an awareness of the problems you have identified.

As an Oklahoman, and as a former small businessman, I can certainly sympathize with the depressed state of our farm economy and with the problems of small agricultural shippers. My concern for the legitimate interests of small shippers has been demonstrated by my opposition to the 1982 blanket boxcar exemption and the export coal exemption, approved by a majority of the Commission but subsequently reversed in court. I have also voted to deny rail abandonments which would have left small coal or agricultural shippers without meaningful transportation alternatives. If confirmed, I will continue to support any necessary protections for small shippers to the best of my understanding.

Question. Rail abandonments cause serious dislocations, especially in rural areas where small shippers, grain elevators, and other businesses are often left without transportation alternatives. According to testimony provided the Commerce Committee on February 21, 1986, of the 1,300 abandonment applications filed with the Commission since Staggers only 23 have been denied by the Commission. 1,200 were granted. Many of the abandonments which have been permitted did not involve a formal investigation or hearings in the communities affected by the abandonment. Can you comment on this record. How can we in Congress be assured that the Commission is meeting its responsibility to determine whether an abandonment is "in the public interest" when only 1.9 percent of the applications are denied? Perhaps more importantly, how are small communities and shipping interests represented before the Commission if no investigation or hearings are held in a particular abandonment proceeding?

Answer. Although the Commission's record in abandonment proceedings is not quite so one-sided when analyzed on the basis of mileage. I share your concern that abandonments may have been approved in situations where the statute seemed to warrant a denial. In many instances I have voted to deny abandonment applications, but a majority of my colleagues have reached a different conclusion. I also agree with your assertion that abandonments can cause very serious dislocations in rural areas. Further, I am personally concerned over the impact of rail abandonments on national defense perparedness.

One of the problems the Commission often faces in abandonment proceedings is the lack of substantial evidence from opponents which can be weighed against the railroads' usual showings of unprofitability. When small communities and shipping interests have filed viable protests, the Commission has not been reluctant to investigate a proposed abandonment. But often opposition is expressed in a conclusory two sentance letter or resolution which gives the Commission little basis for ordering an investigation. In many cases where investigations are ordered, protestants submit no further evidence while the railroads provide additional voluminous evidence and argument in support of the abandonment. This situation possibly could be improved if more hearings were held in the communities affected by the abandonment. I believe such hearings should be held more often and the resources to conduct them should be provided to the Commission.

If confirmed for another term on the Commission, I will continue to support investigations of abandonments where warranted and to encourage my colleagues to fully consider the broad range of interests usually involved in abandonment applications.

Question. Rate reasonableness complaints, especially in coal cases, have seemed to drag on interminably. What confidence should Congress have that the Commission will uphold its promises of faster decisions in these proceedings?

Answer. I cannot make any excuses for the Commission's failure to decide the maximum rate complaints before it in a more timely manner. These cases have been pending too long and the resulting problems and uncertainties created for captive shippers somehow should have been avoided. However, we now have in place a methodology for deciding coal rate cases which has passed a preliminary court chal-

lenge and which I believe can work. The Commission is painfully aware of its shortcomings in this area, and this awareness will insure that the pending rate reasonableness cases will be decided with all possible speed. By the same token, I am sure the Commission will do all that is humanly possible to prevent a recurrence of this delay with regard to a methodology for maximum rate complaints involving other commodities. Our experience with the coal rate guidelines should facilitate a more expeditious outcome in this area.

MOTOR CARRIER ISSUES

Question. Federal insurance requirements have had a dramatic impact on the trucking and bus industries. Although any change in the statutory requirements would have to come from Congress, I understand the Commission is taking action to facilitate insurance coverage for operators. Could you explain your thoughts on the insurance crisis and any actions you believe the Commission should consider to alleviate that crisis?

Answer. The radical increases in motor carrier insurance rates eventually will result in higher rates and fewer service options for the shipping and traveling public. I think this is one of the most serious transportation issues now facing the country. Although the Commission has limited authority to provide solutions, I believe it should use its expertise in motor carrier matters to investiage the causes of the crisis, to focus national and Congressional attention on its seriousness, and to recommend any solutions which may emerge. The Commission already has initiated an investigation which I hope can achieve these ends.

One action the Commission could undertake to provide at least some relief is to streamline its self-insurance regulations. Recently, May Trucking Company sought permission to insure itself. Because of various inadequacies in the proposal, the Commission tentatively denied the request, but suggested to the carrier that it might file another application with certain modifications. In my vote on the May application, I recommended that the Commission review its current self-insurance regulations to determine if they are adequate to meet the current situation. A majority of the Commission concurred in my proposal. Self-insurance is far from a complete answer to this problem, but with the proper guidance from the Commission, I believe it could provide relief for some carriers. It is possible that any overall solution of the insurance crisis may require legislative action.

COMMISSION ISSUES

Question. Over the past several years, the Commission has contributed to a credibility gap through delayed decisions, everchanging standards of review, personality differences, and the like. Could you describe your view of the proper role for a Commissioner and how you believe you can contribute to a smoother functioning of the Commission in the future? How important is the credibility of the Commission to an efficient transportation system in the United States?

Answer. As Vice Chairman of the Commission, it is my intention to take the initiative in working with the Chairman and the Commissioners to assure that decisions are processed on a more timely basis. I truly believe that a minimum of personality conflicts presently exists, among the sitting Commissioners. When and if personality clashes occur, I will make myself a committee of one to see that they are quickly resolved. At present, all five Commissioners enjoy a friendly and respectful relationship.

Question. The administration has recommended that the Interstate Commerce Commission be abolished and that its regulatory functions be transferred to other cabinet-level departments. What are the benefits of maintaining the regulatory functions of the ICC in an independent agency?

Answer. During my recent Senate Confirmation Hearing, I stated that I was unequivocally opposed to the Administration's proposal to abolish the ICC and transfer the remaining functions to the Department of Transportation. I believe Congress was correct in the establishment of independent governmental agencies where it has deemed that it is absolutely necessary to obtain independent and objective decisions by Commissioners appointed for a specified term of office rather than decisions that may be dictated to a Cabinet level department by the Administration that happens to occupy the White House. Fairness and objectivity must be our watchword. Theoretically, and from an economic standpoint, there would seem to be benefits to consolidating all of the Nation's transportation functions under a single umbrella department. However, in the real world, this does not seem to be the case. During my twenty-five years in Washington, each time that I have seen transfers of personnel from several agencies in order to create one umbrella department, usually the um-

brella department has grown three or four times its original intended size. Classic examples have been the creation of DOT, DOE and HHS. Their records of economy and centralization have not been exemplary.

JAMES BURNETT AND JOSEPH T. NALL TO BE MEMBERS, NTSB

MONDAY, MARCH 24, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. Nancy Kassebaum presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member; Steve Johnson, staff counsel; and Steve Palmer, minority professional staff member.

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. The hearing will please come to order.

It is a pleasure this morning to hold a hearing on two nominees for the National Transportation Safety Board. The first nominee for a second-term appointment to the National Transportation Safety Board is James Burnett.

It is a pleasure to have you appear, not only now in your role as a renominee, but also the many times you have been a witness and offered us some valued insight.

It is a great pleasure, too, to welcome a colleague, Senator Pryor, from Arkansas, who has a few opening comments. It is a pleasure to welcome you here, Senator Pryor.

STATEMENT OF HON. DAVID PRYOR, U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Madam Chairman, thank you very much.

I am very pleased this morning and highly honored to be able to introduce to this distinguished committee my friend from Arkansas, Jim Burnett, who has served since December 1981 as a member of the National Transportation Safety Board. After only 4 months on the Board, Jim Burnett was made Chairman.

He was immediately given responsibility for the work of one of the most crucial investigative bodies in the entirety of Federal Government. Since then, he has had wide experience with the problems, the issues, and the challenges that we face today in transportation safety.

He has been involved in numerous investigations during his tenure, and he has been cited for his efforts to improve public safety in transportation. His work since 1981 has been tireless and exemplary. Those of us from our State of Arkansas are very proud

of Jim Burnett's record, but we are hardly surprised at this achievement.

Jim has always put together impressive accomplishments. He has always met every challenge. He was Phi Beta Kappa at the University of Arkansas where he later took his law degree. In 1974, he became the youngest judge in Arkansas' history when he was elected municipal judge of the city of Clinton in Van Buren County.

He is a truly dedicated public servant, a tireless worker, one who really cares about the safety of the American public. I might add also, if I might, that only a few days after he became a member of this distinguished Board that he was faced with the immediate crisis of the tragedy of the Air Florida crash into the 14th Street Bridge, and on that same day the first fatality in the Metro D.C. subway system.

I do ask the committee to welcome my friend and fellow Arkansan, Jim Burnett, and I am very pleased to recommend him for a second term on the National Transportation Safety Board.

Thank you very much, Madam Chairwoman.

Senator KASSEBAUM. Thank you, Senator Pryor.

Mr. Burnett, we will place the biographical sketches in the record. Do you have any opening comments?

[The biographical sketch follows:]

JOHN C. DANFORTH, MISSOURI, CHAIRMAN
BOB PACKWOOD, OREGON
BARRY GOLDWATER, ARIZONA
NANCY LANDON KASSEBAUM, KANSAS
LARRY PRESSLER, SOUTH DAKOTA
SLADE GORTON, WASHINGTON
TED STEVENS, ALASKA
BOB KASTEN, WISCONSIN
PAUL S. TRIBLE, JR., VIRGINIA
ERNEST F. HOLLINGS, SOUTH CAROLINA
RUSSELL B. LONG, LOUISIANA
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
DONALD W. RIEGLE, JR., MICHIGAN
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
W. ALLEN MOORE, CHIEF COUNSEL AND STAFF DIRECTOR
RALPH B. EVERETT, MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: BURNETT (Last) James (First) Jim (Other)

   Address: 108 Thomas Street (POBox 147) (Current residence) 800 Independence Avenue, S.W. (Business)

   Clinton, AR 72031 Washington, DC 20594

2. Position to which nominated: Member Date of nomination: President announced intention to nominate on 2/25/86

3. Date of birth: September 20, 1947 (month) (day) (year) Place of birth: Little Rock, AR

4. Marital status: Single Full name of Spouse: n/a

5. Names and ages of children: n/a

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Arkansas Law School		Juris Doctor	1973
University of Arkansas		Bachelor of Arts with major in Political Science	1970
Clinton High School		Diploma	1965

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
1973	12/81	Self-employed	Clinton, Arkansas	Attorney at Law

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

Chairman, NTSB, 03/82-03/84, 05/84-05/86

Vice Chairman, NTSB 1/82-3/82, 3/84-5/84

Member, NTSB, 12/81-1/82

Special Associate Justice of Supreme Court of Arkansas, 2/81

City Judge, Damascus, Arkansas, 1979/1981

Municipal Judge for Clinton, AR, and Van Buren County, 1975/1979

STATEMENT OF JIM BURNETT

Mr. BURNETT. Thank you, Madam Chairman. It is a great honor to be introduced by Senator Pryor, who has been my good friend for 20 years since I first came to Capitol Hill as a congressional intern. I appreciate that very much.

It is an honor to appear again before this committee as a nominee of the President. This is the fourth time that I have appeared in the last 4 years and 4 months, and I have always appeared with great awe and respect for this committee. I will confess, however, today with not quite as much terror as I had when I came here 4 years ago.

I am here for confirmation, Madam Chairman, to what I consider to be the best job in Washington. It is often a grim job, it is always a grueling job, but it is a job that offers the opportunity to be of profound service to the American people in increasing transportation safety, and to do it with relatively—as the activities of the Federal Government go—with relatively small amounts of public resources.

It is also the best job in Washington because of the privilege of working with the Board and the staff of the National Transportation Safety Board whom I consider to be the most outstanding group of public servants and the most dedicated group of public servants that I have ever worked with.

I have also had, of course, the opportunity to appear before many of the committees of Congress, all of which are deeply dedicated to the objects and goals of the Board and transportation safety.

We have had many great accomplishments in the last 4 years, Madam Chairman. We have achieved finally, or at least are on the verge of achieving, the Safety Board's longstanding goals in aircraft cabin safety. We have issued three very influential reports which I think are going to improve the crashworthiness of general aviation aircraft. We have persuaded the Federal Railroad Administration finally to give us a rule to deal with the problem of alcohol and drug abuse on the railroads.

We have given the States a comprehensive plan for dealing with the problem of drunk driving, and we are following up with the States in the implementation of that. We have had many accomplishments of this nature, but there is still much to be done. As the past year has indicated, we still have many problems in aviation safety that have to be dealt with.

There continues to be a great deal of concern about the quality of the FAA's surveillance system and its ability to fairly referee the competitive system that we now have in the Nation's aviation industry. There is also, of course, continued concern about the quality of our Nation's air traffic control system.

It has been my job as Chairman of the Board to maintain the credibility of the Board so that the Board could comment on those issues in a way that would, when necessary, reassure the public and also constitute oftentimes a stern warning of things that need to be corrected.

I am very proud that we have been able to do that in the time that I have served with the Board, and I very much appreciate the continued interest of this committee in our activities.

Madam Chairman, that concludes my introductory statement. I would be glad to respond to questions.

Senator KASSEBAUM. Thank you very much, Mr. Burnett.

I would like to ask also that a statement endorsing your reappointment by Congressman John Paul Hammerschmidt be made a matter of record.

I do have several questions because, as you know, I feel that the National Transportation Safety Board has quite a challenge before it today. As Senator Pryor mentioned, you stepped in as Chairman and new Board Member at an extremely difficult and challenging time.

As we have gone through some very busy years, some questions on the part of those in the community professionally, in aviation and outside, have wondered about all the aspects of aviation safety. NTSB, as it properly should be, is very much involved.

I would like to go through some questions that I think reflect the interest and some of the concerns of those who are following NTSB and recognize that it must continue to be in the forefront of addressing, in a very professional and objective way, the concerns of the aviation community.

I would like to ask you, in your role as Chairman and as a Board Member, which areas of transportation safety do you feel merit special attention by the Board? And do you believe that enough has been done in these areas during the last several years?

Mr. BURNETT. Well, of course, Madam Chairman, in the areas which I think merit special attention are those in which not enough is being done, and that is the reason I think the Safety Board has to give attention to them.

I have mentioned the area of FAA surveillance. We are looking at that issue in every aviation accident that we investigate where it appears to be a relevant issue at all, and we are looking at it in depth, and I think we are going to have to continue to do so.

I think we are going to have to begin to raise questions and look very closely at pilot training and qualifications. Over the last several years, traditionally the major air carriers in this country have operated to a level much higher than required by FAA regulations. Now, because of competitive pressures, it tends to be moving downward toward the regulatory minimums, and the question is: Is this going to be permissible and should regulations be changed in order to meet that?

I think again the area of air traffic control is one that we have to look at, and we have increased the Board's staff in that area.

In the area of surface transportation, I think we have not given adequate attention at the Federal level to trucking safety—to the qualifications of truckdrivers, to the screening of truckdrivers to eliminate those who are using or apt to use alcohol and drugs, to look at the practical effects of the much larger trucks that are now on our Nation's highways.

And I think in the area of hazardous materials, the hazardous materials classification system is woefully inadequate. It classifies the methyliscyinate that killed 2,000 people at Bophal as a flammable liquid and gives no indication of its toxicity, and that is true for many other products that are similarly misclassified.

So there are many tests that remain for the National Transportation Safety Board. We have to be judicious about which one of those we tackle in view of our resources. Given the trouble that the general aviation industry is in today, we have to address how we can reduce the cost of the liability actions that exist, and I think the best way to do that is to get the Board's program of general aviation crashworthiness, which we now have outlined to the Federal Aviation Administration, actually adopted.

So those would be among my priorities.

Senator KASSEBAUM. Let us take the FAA a minute. You mentioned the surveillance responsibilities. Do you feel that the recommendations you are making are being followed by FAA? There has been a long, ongoing question of recommendations that NTSB makes and there seems to be no apparent followthrough.

Is this still the question? What do you do to improve followthrough?

Mr. BURNETT. Well, we have actually put a lot of emphasis over the last 4 years on improving our followthrough on recommendations. It has been one of the major areas of emphasis of my administration, because it has been the philosophy that we follow that our work is not done when we get a safety recommendation to the FAA. The work is done when that recommendation is adopted and a substantive safety reform is made.

In the area of FAA surveillance, I think we have seen a lot of progress on the part of the FAA and their philosophy. We see a whole lot more enforcement actions being implemented. We saw the National Air Transportation Inspection Program initiated in both its phases. Unfortunately we still find in the course of accident investigation that those inspection programs did not catch some problems we feel should have been caught by FAA surveillance.

So they are far from being there. I suppose when I testified 2 years ago before this committee if asked about this I would have said the problem is primarily the lack of proper FAA strategies to use their people. And although I think they have moved in the right direction in that area, I do not think they are all the way there yet.

I am seeing in the latest accident investigations more and more of the problem of just absolute inadequacy of the personnel to do the job in terms of numbers. I know I held a——

Senator KASSEBAUM. Pardon me. Do you mean in maintenance? Where do you mean?

Mr. BURNETT. Both the maintenance and the operations sides, although I think where we have seen it most glaringly in a couple of recent investigations has been on the operations side. I am speaking specifically of the Harrisonburg Henson Airlines accident and the Bar Harbor accident in Maine.

The Vice Chairman of our Board presided over the hearing on the Bar Harbor accident, and I presided over the hearing on the Harrisonburg accident. I think the record in both cases shows that from the operational standpoint the resources of the FAA inspectors involved were so far stretched that there was no surveillance worthy of the name.

The FAA, of course, is trying to add additional inspectors. They are restricted in that not only by the budgetary considerations but the difficulty of hiring qualified people and training them. You just cannot rev up as quickly as we actually need to with the situation that we have today.

I think there has probably tended to be some overemphasis on the maintenance side. I do not think we have found any evidence yet of any wholesale dropoff in maintenance quality. But we certainly see, especially among the commuter air carriers, a scraping of the bottom of the barrel as far as pilot material and the need for good operational surveillance in that situation may be more of a crisis than on the maintenance side.

Senator KASSEBAUM. When you make note of that, what do you do with that information?

Mr. BURNETT. Well, we include it in our reports, as we have in several reports that we have already adopted, and we of course have several reports now under consideration that we will——

Senator KASSEBAUM. These are special reports?

Mr. BURNETT. No, they are accident reports which deal with accidents like Henson and Bar Harbor, and we will also see maintenance-related surveillance issues in the report on the DC–9 crash in Milwaukee.

Now none of those are completed yet, and one of the reasons is that we have been going very deeply into the surveillance background. But when we do make the report, we are going to make that with full attention to those issues, and hopefully we will be able to identify recommendations that can be made to correct it.

Senator KASSEBAUM. You will do that? That is your followon from the recommendations you will make?

Mr. BURNETT. That is correct.

Senator KASSEBAUM. Speaking of personnel, as you know, there have been charges made that NTSB itself was losing some of the professional personnel, and that morale has been low, and so forth. Could you answer those concerns? And do you believe that this situation has improved?

Mr. BURNETT. Madam Chairman, I am pleased to have the opportunity to do so. Actually, last year when these articles began to appear we had an attrition rate on our aviation side of our operations which was only two higher than the average over the last 3 years since we had the reductions in force. We have had an increase in attrition, but most of it has been—practically all of it has been on the clerical side and the surface transportation side.

In fact, there has been quite a bit of comment about the loss of a couple of our aviation investigations in charge [IIC's]. If we look at the average experience level of our eight aviation IIC's 5 years ago and compare that with the average experience level today, we find about a 5-year increase both in the number of years of experience in accident investigation, and the number of years of experience with the NTSB, because we have replaced both of those individuals that we lost with people from our field offices who were highly experienced accident investigators.

Even when we have the retirement of one of our IIC's at the end of this month we will be substantially higher in average experience than we were 5 years ago. We regret losing any of our experienced

people, but we are very proud that we are able to replace them with people of very high experience levels and very great ability, all of which is being well demonstrated in the course of the accident investigations we have ongoing.

We have of course lost a couple of senior people, one to NASA and one to the FAA. In both of those cases we have replaced them with highly competent people, and in the case of Mr. Ron Schleede who replaced Mr. Hendricks, he is far more experienced in accident investigation than was his predecessor. We also have a very experienced person who is taking over the leadership of our lab.

Senator KASSEBAUM. You mentioned in the air traffic control area that you were increasing the Board's staff. Did I understanding you correctly? What did you mean by that?

Mr. BURNETT. We have added a position. When we talk about increasing staff on the Safety Board, a one position increase is a lot. But we are trying to, even with the reductions that we have had to make overall in personnel, we are trying to add more people in that area.

Of course that is all contingent on what happens pursuant to Gramm-Rudman and whether the Gramm-Rudman targets are met, and if they are not met what kind of reductions we will have to take, which could be very devastating for the Board.

Senator KASSEBAUM. Is this particular addition someone who would just work with the air traffic control——

Mr. BURNETT. Oh, yes, we have a group of——

Senator KASSEBAUM [continuing]. System to analyze——

Mr. BURNETT. We have a group of specialists who come out of the air traffic control system, and who investigate—who are the ones who interview controllers in the course of our investigations. We have ongoing now a runway incursion special investigation which is looking at a whole trend that we identified last year of increasing incidents which involve near collisions of aircraft on the runway.

So we have chosen this as a vehicle to look at how the air traffic control system is working. This has, from the Board's standpoint, several advantages. When we are asked, as we were, and as we did twice, to produce an overall study of the air traffic control system, it gets our people somewhat out of what is their forte, which is investigating accidents and incidents.

So I think it is best for the Board to address concerns about the air traffic control system in the course of investigating accidents and incidents, and try to look at these in a thematic way so we can produce out of a whole mass of these accidents—and usually with air traffic control, fortunately, incident investigations some common conclusions. I think this special investigation we are going to produce this spring will do a very dramatic job of highlighting some of the problems that exist, and furnish a basis for their correction.

Senator KASSEBAUM. Do you believe that there are too few air traffic controllers today to meet the volume in the system?

Mr. BURNETT. Well, I think that undoubtedly it would be nice to have more in order to meet the volume in the system. Now in saying that, I would emphasize that the system can be operated

safely even with fewer controllers than we have as long as flow control is maintained.

If traffic at any given hour in time at any given place is tailored, as it can be, to the ability of the personnel on duty to handle that traffic, the system can be operated safely. This system that we have today cannot be operated safely any other way.

Prior to the strike in 1981, we were staffed to handle peakloads at all hours. Now that had very grave disadvantages in terms of wasted public resources, and also a lot of very talented people who had a lot of spare time on their hands sitting around with really no demands.

We now have a system where we do not staff for peakhours except when it is expected, and therefore you have to control when those loads take place. One of the salient indications that we found from the runway incursion studies is that we are finding a lot of cases in which supervisors, instead of being in a backup supervisory role, even sometimes in times of light traffic, were required to be actually controlling traffic. So that when you had a problem develop, you had somebody getting a little beyond their capabilities or some confusion developing, you had nobody in a backup role to catch it, no secondary line of defense.

The Safety Board has, since our early reviews of the air traffic control system after the strike, told the FAA that we thought that they ought to control traffic at a level that would enable them to get their supervisors back into supervisory work, and we are finding far too many incidents of this in relation to near tragedy for me to be comfortable with the present system.

Senator KASSEBAUM. I could spend some more time going into that, but perhaps this is not the time or the place.

I would like to ask another question. As a Member of the current Board, how do you account for allegations that evidence has been lost during NTSB investigations, thus obstructing litigation? In your opinion, does a problem exist? If so, what is being done to solve it? And if not, what is the basis for such allegations?

Mr. BURNETT. Madam Chairman, we only know of one incident in which evidence has been lost. We have had another incident where it was misplaced for a period of time. Out of the thousands of aircraft parts that we handle, I think the Board has a fairly good record with only those two situations. Any loss of any part or even misplacement of any part is a problem and it has to be dealt with.

We had one part that was lost—there were actually two small engine parts that were in an envelope that was transmitted to our lab. The secretary opened the envelope, found the document transmitting that to the lab, assumed that was all that was in it, took it out, and threw the remaining contents, which were very small, in the wastebasket.

What we did to resolve that problem was to institute new instructions to our field personnel as to how they were to send the package of the parts that were to be sent into the lab, and also instructions to the clerical staff at the Board to attach all envelopes to the documents that were sent in.

We believe we have resolved that problem. We had another situation where we believe that a generator—that was in Air Illinois investigation—after it had been completely documented by the

Board and we were through with it, was removed from the offices of one of our investigators. We do not know why that was done. It may have been an attempted theft. We realized it, communicated with the security staff at the building, notified everybody to be on the lookout for it, and we think that the person who took it later deposited it in one of the other offices. It was found in a place where we cannot account for it ever having been taken purposely by any of our personnel.

Senator KASSEBAUM. Thank you.

Has NTSB ever led interested parties to believe under false pretense that they would be allowed to participate in a Board investigation if they made financial or in-kind contributions toward covering the cost of the investigation? And if not, what do you believe would be the basis of this allegation?

Mr. BURNETT. Well, I think if any such representations were ever made, as far as I am concerned it was made under false pretense. I think the Board has traditionally tried to get insurers to bear as much of the cost as we can get them to bear of aircraft salvage operations, of moving parts down from the mountaintops, and of course we often want to take a look at those parts further after they are removed from the site. Because of our limited resources we have always been quite good at getting someone else to bear a lot of those costs that ultimately we would have to bear if they did not.

I have gotten questions at various forums at which I have appeared in which insurers were represented that lead us to believe, or the implication involved in those questions is that they feel that they have made contributions to those salvage efforts under the belief that that would get them greater access, quicker and greater access, to the Board's accident investigation materials.

Now if that has ever been the case, it should not have been. I have made quite clear to them in all cases in which that was brought up that party status or access to the Board's material is not going to be bought, that it is going to be shared equally regardless of any contributions made to the recovery of wreckage.

I take it that some of the people I have given those answers to have not really been happy with the answers. They would have preferred the other answer, that, yes, that does give you access to wreckage or some kind of priority because they have clearly asked that question in the expectation that it was a justification for that sort of thing, but that will not be the Board policy, is not, and has not been under my leadership.

Senator KASSEBAUM. That is clearly stated Board policy, is it?

Mr. BURNETT. We certainly have a policy that insurers cannot be parties, and they have no status as parties, and they are barred from party status. They take the same status as far as access to our information that the press or anybody else would have, and should have no additional status.

Now I suspect frankly from some of the questions that I have gotten on that matter that that has not always been carried out in the field. I have no documented examples of it, but one of the things we have done in the last 3 years or so is to increase the consistency with which our Board policies as to party participation have been carried out. Obviously that increase in that consistency

has brought some difficulties to some people who became used to taking advantage of the freedom with which some investigators allowed them access because of friendship or other reasons.

Senator KASSEBAUM. Thank you.

Mr. Chairman, in your tenure so far you have given a great deal of attention to drug abuse and alcoholism in transportation. How serious is the problem?

Mr. BURNETT. I think it continues to be our most serious transportation safety problem, and it is a problem in all the modes of transportation, except perhaps pipeline since we do not have an operator onboard a pipeline. I do not think we have documented it there, but we certainly have in all the others.

Senator KASSEBAUM. Do you feel that it is a problem in aviation?

Mr. BURNETT. Yes, I believe it is a problem in aviation. In fact, about 10 percent of the fatal general aviation accidents that we investigate appear to be due to—or to involve, I should say, alcohol use.

To give you an example, Madam Chairman, of one that we are looking at right now, there was a part 135 cargo carrier flying from I believe Milwaukee, which crashed into a mountaintop at Copper Hill, TN, after making an abrupt descent of 11,000 feet. The investigators on the scene could not account for why this happened, and decided they might ought to look at the record of the pilot.

We found six, in the last years I think, instances of his having had a license revoked for drunk driving. He had also been arrested for driving on a revoked license. He had been arrested for reckless driving. Clearly his record indicated to me that he was not qualified to drive a car, and yet he was a part 135 pilot, certified pilot, and an investigation of those facts could have determined that.

I think that the FAA needs to be more aggressive in trying to learn these things, and we would like to see legislation for or at least I would like to see legislation—that would allow them to consult the national driver registry to get this information as far as abuse of alcohol on the roadway, which would be a good indication of a potential alcohol problem and therefore the basis of denial of a medical certificate.

But I do not think that the FAA is in as aggressive a posture as it should be in that area. They have recently adopted a rule which, although it was supposed to be a step forward, in my view may have been a step backward in that it adopts a tolerance of a 0.04 alcohol content as being the stage at which it would be considered a violation of the rules to have more alcohol in your blood than that, although it continues the 8-hour rule. If you are actually in compliance with both rules, 8 hours before you were pretty drunk and are flying under a situation which clearly I think you should not be.

In addition, the FAA's strategy for dealing with the potential surviving pilots who may have been under the influence of alcohol and drugs is to leave it to State officials to request a blood test or a breathalyzer test. And in many States, there is no law that authorizes State officers to do this in an aviation situation.

So we still have far from what I would consider a good enforcement surveillance system in relation to alcohol and drugs in aviation. We have only had one—and it was a cargo carrier, a foreign

cargo carrier with an American pilot in major carrier aviation in which we had an alcohol-involved problem. That was at Anchorage in a Japan Airlines crash, I believe a DC-10, which was fatal for the crew onboard as well as the load of cattle that they were carrying. But the possibility of the first incident of that sort of thing being tragic for a whole planeload of people is one that I think justifies greater vigilance than we have at this point.

Senator KASSEBAUM. Thank you very much, Chairman Burnett. It is a pleasure to have you here today and your always interesting observations regarding safety work in transportation.

Mr. BURNETT. Thank you, Madam Chairman.

Senator KASSEBAUM. Thank you.

As the next nominee it is a pleasure to welcome Joseph T. Nall of North Carolina, who has been nominated for the remainder of the term expiring December 31, 1987, succeeding Vernon L. Gross.

As a lawyer and a pilot, we are looking forward to the understanding that you can bring to the important work of the National Transportation Safety Board. Senator Hollings had hoped to be here to offer some introductory comments and could not. I would like his statement to be made a part of the record.

[The statements follow:]

OPENING STATEMENT BY SENATOR HOLLINGS

Madam Chairman, it is with sincere pleasure that I come before this Committee in support of the nomination of Joseph T. Nall as a Member of the National Transportation Safety Board.

Although he now calls North Carolina home, Joe Nall spent some time in a State near and dear to my heart, graduating in 1964 with a Bachelor of Arts from Furman University in Greenville, South Carolina. He then went on to obtain advanced degrees from Southeastern Baptist Theological Seminary and Wake Forest University School of Law.

Joe Nall has had a number of varied and interesting professional experiences. He currently is serving as an attorney in private practice in Smithfield, NC. He has also worked with a law firm, served as a law clerk, and has been active in the clergy.

Mr. Nall has a significant amount of aviation experience, both in law and in practice. He is an instrument-rated pilot and is the operator of a ground school for private pilot applicants. He has authored a number of articles relating to general aviation for publication in trade journals. Finally, in addition to representing a number of pilots and aircraft owners in accidents and licensing matters, Joe Nall has represented both plaintiffs and defendants in civil cases involving surface transportation accidents.

Madam Chairman, I believe that Joe Nall would make a significant contribution to the NTSB. That is why I wrote to the President urging his nomination. And that is why I recommend him to you today.

Senator KASSEBAUM. I also have statements enthusiastically recommending your confirmation from Congressman Bill Nelson and Congressman Charles Whitley.

Do you have any opening comments.

[The biographical sketch follows:]

JOHN C. DANFORTH, MISSOURI, CHAIRMAN
BOB PACKWOOD, OREGON
BARRY GOLDWATER, ARIZONA
NANCY LANDON KASSEBAUM, KANSAS
LARRY PRESSLER, SOUTH DAKOTA
SLADE GORTON, WASHINGTON
TED STEVENS, ALASKA
BOB KASTEN, WISCONSIN
PAUL S. TRIBLE, JR., VIRGINIA
ERNEST F. HOLLINGS, SOUTH CAROLINA
RUSSELL B. LONG, LOUISIANA
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
DONALD W. RIEGLE, JR., MICHIGAN
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
W. ALLEN MOORE, CHIEF COUNSEL AND STAFF DIRECTOR
RALPH B. EVERETT, MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

WASHINGTON, DC 20510

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: NALL (Last) Joseph (First) Trippe (Other)

   Address: 17 Sussex Drive, Smithfield, N.C. 27577 (Current residence)

   P.O. Box 179, 201 Market Street, Smithfield, N.C. 27577 (Business)

2. Position to which nominated: National Transportation Safety Board

   Date of nomination: February 28, 1986

3. Date of birth: May (month) 16, (day) 1942 (year)

   Place of birth: Atlanta, Georgia

4. Marital status: Separated

   Full name of Spouse: Carolyn Elizabeth Baker Nall

5. Names and ages of children: Molly Elizabeth Nall, Age 16

   Anna Kate Nall, Age 13

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Brown High School Atlanta, Ga.	1956-60		
Furman Univ. Greenville, S.C.	1960-64	B.A.	1964
Ga. State School of Business Admin. Atlanta, Ga.	1962		
Emory Univ. Atlanta, Ga.	1962		
Southeastern Bapt. Theol. Seminary Wake Forest, N.C.	1964-68	M.Div.	1968
Wake Forest Univ. School of Law Winston-Salem, N.C.	1970-73	J.D.	1973

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
1965	1969	First Baptist Church	Smithfield, N.C.	Asst. Min.
1969	1970	Beth Car Baptist Church	Halifax, Va.	Minister
1970	1971	Hanes Mills	Winston-Salem, N.C.	Clerk
1972	1972	Womble, Carlisle, Sandridge & Rice	Winston-Salem, N.C.	Law Clerk
1973	1981	Mast, Tew, Nall & Lucas, P.A.	Smithfield, N.C.	Attorney
1981	1986	Joseph T. [illegible]ll, P.A.	Smithfield, N.C.	Attorney

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

Attorney for Aero Contractors, Ltd., Smithfield, N.C., aviation contractor with various federal agencies (1981-86). Part-time with XII U.S.Army Corps (Res.), Atlanta, and Federal Aviation Admin., Atlanta, during college (1960-63). Attorney for Johnston Co. Board of Alcohol Control. Board member and chairman, Johnston Co. Board of Social Services.

STATEMENT OF JOSEPH TRIPPE NALL

Mr. NALL. I will be very brief, Madam Chairman. I do have a statement as an opening comment that I believe should be made a part of the record.

I am a trial attorney in North Carolina, and as you have said I do fly actively and am a user of the airspace system, which I thoroughly enjoyed you and Mr. Burnett discussing this morning. As a general aviation pilot, obviously my emphasis and my interests are in the field of general aviation. I will continue to support the efforts of the National Transportation Safety Board to help it retain its credibility and its work in independent accident investigation.

Thank you.

[The statement follows:]

STATEMENT OF JOSEPH T. NALL

It is a distinct privilege and honor to have been nominated by President Reagan to serve as a Member of the National Transportation Safety Board (NTSB). As an active pilot and aircraft owner using the national airspace system regularly, I am impressed with the vision and dedication of the NTSB and other federal agencies who routinely and predictably provide an efficient and safe environment in which to operate. I am committed to keeping America's skies and her land transportation safe for the traveling public. The NTSB and related regulatory agencies deserve our best efforts in order to maintain the public trust in transportation safety. It is my belief that the NTSB must therefore work aggressively and creatively at maintaining our competence, credibility and candor in accident investigations and safety improvement recommendations.

My experience as a trial attorney in North Carolina's federal and state tribunals has taught me to be analytical, inquisitive, fair and open-minded. My experience as an instrument-rated commercial pilot has equipped me with the technical knowledge required to understand the intricacies and complexities of safe flight even under adverse conditions. In investigating and preparing for trials, my experience as an attorney representing numerous clients in automobile, truck, and grade crossing accidents has allowed me to learn and apply basic elements of highway safety and the human factors involved therein. My experience as an instructor of fledgling pilots has given me insight into human factors and judgment required for safe flight. That experience has also allowed me to share with others the sheer joy and wonder of flight.

If confirmed, I eagerly anticipate contributing my energy and dedication to transportation safety. I look forward to the opportunity of working with other Board Members and dedicated staff of the NTSB, along with other public agencies and industry groups, who also share in our quest for safe transportation.

I pledge to be energetic in my duties, loyal to the cause of transportation safety and to familiarize myself fully with all modes of transportation safety

I would be happy to answer any questions the Committee may have.

Senator KASSEBAUM. Thank you very much, Mr. Nall.

Senator Ford, welcome. Do you have any questions?

Senator FORD. Welcome to you. Do you have any?

Senator KASSEBAUM. We have already had Jim Burnett's testimony, and we have just begun with Mr. Nall.

Senator FORD. I have great confidence in the chairman, and I will pass for now any comments or questions.

Senator KASSEBAUM. Thank you.

What was the nature of your work, Mr. Nall, as an attorney for Aero Contractors of Smithfield, NC, which you have described as an aviation contractor with various Federal agencies? Are you still involved with that company?

Mr. NALL. As of today, Madam Chairman, I am still retained as corporate counsel for that organization. It is a corporation, and I also serve as corporate secretary. If I am confirmed, of course I

intend to relinquish any interest and resign as secretary of that corporation and would not actively represent them in the future.

As to the nature of that particular corporation, because it has in the past maintained some Government contracts, obviously it would be improper for me to retain any relationship in a formal fashion with Aero Contractors. They basically do maintenance work for the public, as well as some contract flying for armed services agencies.

Senator KASSEBAUM. The leasing of aircraft?

Mr. NALL. They have primarily done contract flying. They have used their own aircraft in flying for other entities.

Senator KASSEBAUM. You worked for a time for the Federal Aviation Administration. That was probably a while back.

Mr. NALL. Yes.

Senator KASSEBAUM. Was it a long enough period of time that you could offer any insights or the changing role and increased pressures on the FAA because of what some would say is deregulation, but I think are just the increased demands on the system? Are there any particular observations you would care to make?

Mr. NALL. As to my experience in working with the FAA, it was as a personnel division employee while I was in college. The southwest region was divided up, and the southern region was created in the spring of 1962, and as that office opened in downtown Atlanta before the construction of their new building in Hapeville, GA, they did hire a number of employees at that time. I was working for them in the spring of 1962, the summer of 1962, and the summer of 1963. Basically it was in personnel work and would not have gained at that point a sufficient insight into that particular problem.

I do have a brother who is an air traffic controller and has been an air traffic controller since 1958 at the Atlanta Center. We have maintained a very close relationship over the years, and I think that helps me understand some of the frustrations and difficulties from the controller's viewpoint that FAA is having.

Senator KASSEBAUM. Would you agree with Mr. Burnett's assessment that there needs to be a real flow control, that the pressures come with the peak times, and that this is an absolute essential, given the numbers of controllers we have today?

Mr. NALL. Yes, I agree.

Senator KASSEBAUM. Would you have any further observations to make at this point on that area?

Mr. NALL. I think that from a flow control basis there has to be an emphasis from the facility itself of the flow control problem. For example, a controller may be at a particular station. He may be close to becoming saturated, and it is probably difficult for flow control in Washington or another facility to be able to understand the dynamics of that particular problem as that controller and his supervisor see it. So I do feel there should be greater input from the controlling facility side of the flow control problem than from a central control viewpoint, and I think emphasis should be given to that particular problem.

Senator KASSEBAUM. What at this point do you believe merits the special attention of the NTSB? Where would you want to see a focus placed?

60-129 O - 86 - 3

Mr. NALL. All of us are concerned, Senator Kassebaum, about the effects of deregulation. We are all concerned of course about the dissemination of safety information, and the NTSB has indicated already it is concerned in those areas, and it will continue to be.

I feel that general aviation training is a priority that can help make the general aviation statistics more favorable. I will say that general aviation statistically is safer and has had an improving safety record. I salute the NTSB's efforts and hope I can make that general aviation record even better.

I would like to see more emphasis on better dissemination of weather information, particularly to general aviation users and a continued concern for crashworthiness. We have already discussed today air traffic control. I also feel that with Dr. Lauber's appointment to the NTSB, there should be and there will be increased interest in research into pilot judgment and human factors because of his very fine expertise.

Senator KASSEBAUM. Regarding the dissemination of weather information, because that is a point that has been raised in our earlier hearings on aviation safety this fall, what specifically do you have in mind? Do you have any specific recommendations to make in that area?

Mr. NALL. I cannot give you today a menu or a list of items that I would specifically recommend, but it is simply an issue, an area of concern that I have because of so many weather-related general aviation accidents, but I cannot give you more specifics at this time, Madam Chairman.

Senator KASSEBAUM. This is not really a fair question to ask you—I wish I had asked Mr. Burnett when he was here—but does the NTSB do special reports? In the past, have special reports been done that have not been directly related to a particular accident?

Mr. NALL. There have been special studies. I think the record does show numerous ones. I think the problem that Mr. Burnett alluded to a moment ago was one of limited resources of money, time, and staff. But special studies occasionally have been very helpful to point out trends and directions of safety concerns, and consistent with our ability and resources. Yes, I think the special studies have been helpful and should continue.

Senator KASSEBAUM. Just one final question. You have been a founder and a director I believe of an alcoholism and rehabilitation center. Do you believe that the problem of drug abuse and alcoholism is a serious one in transportation? And what, if any, recommendations do you have to make at this time?

Mr. NALL. Well, the NTSB relies a great deal on industry awareness and public awareness. That is our greatest sanction or greatest strength, I think. There is a strong national concern for alcohol and substance abuse not only in transportation but in family matters, in the criminal field, and in economic matters.

As an attorney, I see some of the tragic results of alcohol abuse. The good side of it is I also deal with a lot of people who have made progress in their own lives in this particular area. This one home that you are talking about that I helped found back in 1974 has made a difference in people who have become active in AA and have changed their lives. So we can treat alcoholism. It is a treatable condition.

Because of the statistics that the NTSB has been able to uncover from studies I think in 1975 through 1981 that Mr. Burnett alluded to earlier, we found that as many as 10.5 percent, or something in that neighborhood, of fatal general aviation accidents result from alcohol-related problems.

It is a national problem that we should all be concerned about, and I think the NTSB under Mr. Burnett's leadership and the NTSB's general mandate has made that an emphasis which should continue, and I support continuing aggressive investigation and study of alcohol-related problems as it impacts transportation.

Senator KASSEBAUM. Thank you.

Senator Ford.

Senator FORD. Thank you, Madam Chairman.

I have two questions. One that is a little bit facetious. Why did you leave the sublime and go to the ridiculous? You were a minister, and then you became a lawyer.

Mr. NALL. Well, Senator, I can only point to one of the members of the Senate Commerce, Science, and Transportation Committee. I believe Senator Danforth did the same thing.

Senator FORD. Yes, but that was part of his training. He could not have gotten out of school if he had not done that, I think——

Senator KASSEBAUM. And then he came on to the Senate.

Senator FORD. Then he came on to the Senate. He went further than you did.

Mr. NALL. Well, it was obviously a personal matter that related to a career change as a young man.

Senator FORD. I did not want you to get into it. It just seemed that—you know, us Baptists have a saying. Being a Baptist does not keep you from sinning; it just keeps you from enjoying it.

Do you have any knowledge of natural gas, natural gas pipelines, things of that nature? The reason I ask that question is that we have had several near tragedies in my State by companies that have had a very good safety record. I have learned a new term. It is called smart pig. That is something you put in the pipeline and it finds some weak spots, or corrosion. They use it in the pipeline. It is something new to me. That is one of the interests I have as an immediate need, as I see it, in my State other than aviation. We have been leaning awfully hard on aviation here, but I suspect you would get into the transporation of naturation gas.

Mr. NALL. Senator, I do not have any direct experience. I do live in a county in which we have a Colonial Pipeline terminal facility, and have represented various people who were associated with that facility. Other citizens and I are naturally concerned with the safety of that pipeline as it goes through our county.

I am sensitive to the issues, but I do not have any direct experience in that area. I am willing to learn and to make the contributions that I can, and I would look forward to working with you and your staff to educate myself and assist in that.

Senator FORD. We would appreciate it, because all of us I think have a national view. But there are also a number of local issues that are extremely important. This happens to be one of the local issues that has cropped up for the third or fourth time in the last 18 to 24 months. So I hope you will make yourself familiar with this.

I am impressed with your background, Mr. Nall. Madam Chairman, I believe he will make a good member.

I thank you.

Mr. NALL. Thank you, Senator. If you would allow me, Senator Ford, I do know something about smart pigs. I live in a county which is the largest pork producer in North Carolina.

Senator FORD. They are not too smart. If they were, they would live someplace else.

Senator KASSEBAUM. Thank you very much, Mr. Nall.

We will be moving forward as quickly as possible on these nominations. If there are no further questions, that concludes the hearing.

[Whereupon, at 10:20 a.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

PRE-HEARING QUESTIONS OF THE MAJORITY AND THE ANSWERS OF MR. BURNETT

Question #1: In your opinion, which areas of transportation safety merit special attention by the Board? Do you believe enough is being done in these areas at this time? In which areas, if any, do you take a special interest?

Response: I believe priority attention should be give.. to the question of the adequacy of FAA surveillance and the adequacy of the margin of safety in the air traffic control system. My experience with the Safety Board has led me to the conclusion that an essential area in which to look for improvement is the scope, depth, frequency and philosophy of FAA surveillance.

Therefore I have a special interest in having Safety Board accident investigations address the question of whether we are getting maximun effectiveness from FAA inspectors charged with surveillance of airlines and maintenance facilities.

As for the safety margin in the air traffic control system, I have a measure of concern. The Safety Board has undertaken a special investigation of an aspect of the ATC system. Specifically, the special investigation deals with the problem of runway incursions, a special category of near-collisions that would not become a part of the near mid-air collision statistics. One of the investigations conducted as a part of this project -- incidentally involving two DC-10s with 501 persons on board -- has already led to the issuance of safety recommendations.

Other aspects of the ATC system's safety also are being monitored on an accident-specific basis. For example, the role of ATC has been given extensive consideration in connection with the crash of Delta Flight 191 at Dallas/Ft. Worth International Airport last August 2, and the Henson Airlines crash last year in Virginia. The Safety Board will not hesitate to speak out in the form of safety recommendations should the evidence warrant it.

Another area of interest involves my belief that further work must be done to increase our understanding of the role human factors can play in accident causation and prevention. The Committee is, of course, aware of the increase in Board personnel assigned to such pursuits. Additionally, I believe the NTSB is most fortunate to have as a new Member, Dr. John Lauber, whose background in the field of human factors is widely known and universally respected.

Other areas of transportation safety that merit special attention by the Safety Board, and in which that need is being met, are discussed in response to the next question concerning NTSB special studies that are underway.

Question #2: NTSB special studies, unrelated to any particular transportation accident, are very helpful to the Congress in evaluating problems in the various transportation modes. If confirmed as a member of the Board, are there additional subjects that you believe merit such reports?

Response: There are indeed other NTSB safety studies that I would support to the extent that budgetary restraints permit.

As I noted in response to the first question, I believe understanding the role of human performance in the context of accident causation and prevention is essential if we are to make major strides toward safer transportation systems.

Because of the complicated and critical role that flight crews perform and the fact that flight-crew performance has been raised as a factor in many air carrier accidents, I have advocated a safety study that addresses the question of whether improved training might have produced a level of performance sufficient to cope successfully with the difficulties that led to the accident. I expect this study to address whether there are specific areas, such as wind shear detection and avoidance, that should be the subject of improved training techniques and what those techniques might be.

Because of the large number of transportation deaths involving use of the nation's highways, it is important to learn what we can about reducing that carnage.

One avenue I have advocated we pursue involves a study that should provide real-world data about conditions under which seat belt systems performed well or poorly. A systematic collection and analysis of such data has not occurred previously in the United States and I expect our work will lead to life-saving recommendations to the National Highway Traffic Safety Administration (NHTSA), to motor vehicle and seat belt manufacturers, and to safety information organizations.

Another aspect of a highway safety study I will continue to support involves school buses. A principal goal of this study is an analysis of the occupant protection performance of post-1977 school buses, that is buses meeting the NHTSA standards issued in 1976 designed to reduce injuries to children in school bus accidents. Once we have a study report we will be in a position to determine if the Safety Board should advocate any changes in the existing federal regulations.

Question #3: Given current budgetary limitations, how would you prioritize NTSB activities?

Response: Given our budget constraints, my priorities include air carrier domestic accident investigation in the aviation mode and highway and hazardous materials transportation safety in the surface mode. Specifically, I would pursue those issues I mentioned in my response to question number one.

Question #4: Do you believe the Department of Transportation and its modal administrations, such as the FAA, have been responsive to NTSB's recommendations? What about industry and other interested groups? If they have not been responsive, why not? Do you have any recommendations for how they could be made more responsive?

Response: A review of the Board's statistics on the question of the responsiveness to NTSB recommendations of the modal administrations within the Department of Transportation shows a marked improvement in recent years.

Of course, we recognize such statistics (Attachment #1) 1/ are generalizations and cannot reflect the degree of responsiveness on some of the "tough" issues.

One reason I believe we have seen an improvement in the modal administrations' responsiveness is that as Chairman I have established a more rigorous protocol at the NTSB for followup on our recommendations.

A second factor is that we have been forthright in speaking out about Safety Board recommendations and the concerns they embody. A prime example is our campaign of several years that finally resulted in a Federal Railroad Administration rulemaking dealing with the problem of drunk or drugged railroaders.

This advocacy approach, applicable to other issue areas as well, has involved taking advantage of opportunities to testify on the subject, as well as to speak to trade organizations. This has the net effect of generating a climate in which the need for the safety initiatives is more readily accepted.

Our advocacy of safety initiatives through speeches and other means has also improved the responsiveness of industry-wide groups and enabled us to reach individual organizations that ultimately must implement safety reforms. This grass-roots approach has been employed in connection with other safety issues, such as boating safety, child safety seats, drunk driving enforcement and aircraft cabin safety.

1/ The attachments are in the Committee files

Our success with this advocacy approach, which has won citizen and industry support, is most promising. We plan to continue it in several other areas, including drunk driver training and hazardous materials classification.

Question #5: Private transportation accident specialists express frustration at being barred from NTSB investigations. They claim that the Board could save time and money by incorporating them in the process. What is your view on this?

Response: For over 25 years, the Safety Board and its predecessor have controlled and limited outside participation in the Board's accident investigations. In 1981, a group of individuals petitioned the Board to, among other things, allow broader participation in accident investigations. The Board's response (Attachment #2) fully explained the Board's policies on the scope of party participation and the need to exclude representatives of claimants and insurers. Although this decision was made before my appointment to the Board, I generally agree with it.

The Board has responded recently to a Congressional inquiry on the current policies on outside participation in its investigations. The Board's response (Attachment #3) reflects the views of the full Board on the subject of the discretionary determination to allow only specified classes of persons and organizations to participate, as well as the prohibition against claimants and insurers.

With specific reference to the suggestion that the Board would save time and money by allowing representatives of any interested person to participate in the investigation, I believe that the opposite would be true. Expanding the investigative group would require more work by the Board's employee's in supervising and closely monitoring additional people. The management of an accident scene is a substantial responsibility for the Board's investigators even with the limits on participation that currently exist, and saddling our investigators with the increased responsibility of overseeing more people would save neither time nor money in my opinion, and would substantially retard the completion of investigations.

The Board investigates accidents for and on behalf of the public and we do not conduct investigations for the purpose of advancing the private interest of any person or organization. I firmly believe that the nonadversarial nature of the Board's investigations must be preserved.

Insofar as the interests of litigants are concerned, the Board returns all physical evidence to the owner of the property, our detailed findings are made public and our investigators provide factual testimony for litigants.

Question #6: In the past, it has been alleged that some Board members have sought to interfere in or influence the Chairman's administrative duties rather than concentrating on policy issues. What is your view of the proper role of a Board member? The Chairman?

Response: I view the role of a Board member as one of making Board policy by means of evaluating factual and analytical information provided by the staff, including approval ot reports and recommendations. In addition, the Board members have, in my opinion, an obligation to follow through on its recommendations to see that they are implemented.

The Chairman is tasked with the additional responsibility to administer the Board's staff and work products. This arrangement has worked well as long as I have been here, and I perceive no problems with it at this time.

Question #7: Over the last several months, stories were circulated which charged that professional personnel were leaving NTSB, allegedly becasue of low morale. Could you describe the situation that existed and what remedial action was taken, if any? What is the situation at this time?

Response: It is true that some news stories have created the impression that NTSB aviation-program professionals have left the Board because of morale problems. However, I believe the significance of the number of people who have left the NTSB, their motivation in leaving, as well as the consequences of their departure have been misunderstood.

How did this come about? There are several elements to the answer.

I have been agressive in attempting to stretch Board resources and have, for instance, focused the attention given to our surface mode responsibilities and increased the safety payout by directing changes in criteria for rail and highway investigations. I believe such efforts, along with my vocal and visible advocacy of surface-mode initiatives, such as the successful push for a federal rule dealing with the problem of drugged or drunk railroaders, may have left some people with the impression that the Board was giving diminished attention and resources to aviation responsibilities.

The impression was erroneous. Not only has the Board not diminished the attention given to its aviation responsibilities, the resource allocation for aviation has actually increased during the time I have been a Board Member. Specifically, budget documents prepared more than a year ago showed that in fiscal year 1980 26 percent of our on-Board personnel had exclusively aviation responsibilities. The comparable figure for FY 1985 was 33 percent. In the current fiscal year the number remains at 33 percent.

In actual numbers, despite a loss of 87 filled positions Board-wide between FY 1980 and FY 1986, the Board now has only three fewer positions filled in the aviation-exclusive category than it did in 1980. Alternatively, if we compare our present aviation staffing against FY 1981 -- immediately preceding my first year with the Safety Board -- we actually find an increase in the aviation-exclusive category of 14 during a time frame in which Board-wide personnel losses numbered 32.

No doubt we have lost individual, valued employees. In attempting to assess the significance of those losses, there are two factors that should be considered by way of background:

A. Resource management has forced us to generally impose a tight ceiling on employee grade-level advancement. This, unfortunately, creates an inducement for employees to seek promotions or career advancement elsewhere.

B. A period of reductions in force (RIFs) and the re-hiring rights of those affected had placed a bottleneck on employee movement and reduced the chances of finding private industry employment. The RIF effect had dissipated by last year and an improving economy had made private employment more accessible.

Nevertheless, during 1985 the Safety Board's loss of personnel with aviation-related work responsibility was only two greater than the average of the three post-RIF years, that is 18 instead of an average of 16.

Many of these employees contributed to the fine work of the NTSB, and we regret losing them. However, I feel justified in saying that the Safety Board has been most fortunate in being able to attract new employees with generally superior academic and professional credentials, while promoting others who have gained invaluable experience in headquarters and field operations.

Since most of the focus in press reports has been on the impact on the Board's aviation accident investigation staff, one statistic reflecting our status at the present time is illustrative. In recent memory, the number of full time equivalent positions for our Aviation Accident Division has been eight professionals (GS-14) and one supervisor (GS-15). The Division

provides investigators-in-charge and report writers for all major aviation accident investigations, as well as for major foreign investigations. The average time with the NTSB (and its predecessor organization) for those eight investigators in 1981 was 10.6 years. The comparable current number is 15.6 years. (Even with the scheduled retirement of a senior accident investigator at the end of the month, the "current" level of "on-Board" experience will be 13 years -- still well in excess of the 10.6-year level of five years ago.)

Lastly, we can hope that there will be a "breather" for our aviation staff from the exceptional demands placed on them by the spate of domestic and foreign investigations experienced last year. A more manageable workload and resolution of uncertainty over the consequences of budget-cutting imposed on the NTSB should enhance morale at the Board.

Question #8: As a current member of the Board, how do you account for allegations that evidence has been lost during NTSB investigations, thus obstructing litigation? In your opinion, does a problem exist? If so, what is being done to solve the problem? If not, what do you believe is the basis for such allegations?

Response: The loss of physical evidence in the custody of the Board is unacceptable, and I am aware of only one such case.

The facts of this case where parts were lost are as follows: Two small parts from the same engine were sent to our laboratory for metallurgical analysis. The parts, along with the required paperwork, were shipped in a large "Jiffy" bag. A secretary opened the bag and removed the paperwork. She accidentally overlooked the small sized parts at the bottom of the bag and discarded the bag, assuming that the parts were being shipped separately. As a result of this mistake, we have taken corrective action which included advising all of our field investigators not to place small, loose parts in a large container unless they are firmly attached to the paperwork. In addition, the secretaries were informed that they must attach envelopes or packages to incoming correspondence.

In the Board's investigation of the Air Illinois crash at Pinckneyville, Illinois on October 11, 1983 we examined and tested the right generator switching unit during the onscene investigation, and the results of the tests, examination and condition of the switching unit were fully documented. The Board retained custody of this as well as other components for further examination at our laboratory in Washington, D. C. The switching unit was taken from the office of the Board specialist who was Chairman of the aircraft systems group and, despite an extensive search, it was not located initially. This unit later was found by the Safety Board and determined to be in the same condition as it was at the time it was brought to Washington. This component was subjected to further examination and inspection, and no new evidence was uncovered as a result of the Board's followup investigative activities.

Given the sheer number of vehicles, craft and components that are inspected by the Board each year, I do not believe that a problem exists with respect to the loss of evidence. We must remain vigilant and we will make every effort to insure that evidence in the custody of the Board is not lost.

Question #9: Has NTSB ever led interested parties to believe, under false pretense, that they would be allowed to participate in a Board investigation if they made financial or "in kind" contributions toward covering the cost of the investigation? If not, what do you believe is the basis for such allegations?

Response: The rules governing participation in the field investigation of aviation accidents are set forth in 49 C.F.R. Sec. 831.9, and the criteria for participation have not been changed since I was appointed to the Board

in 1981. Parties to an investigation are limited to those persons and entities whose activities, functions or products were involved in the accident and who can provide suitable qualified technical personnel to actively assist in the investigation. These rules in no way condition participation on providing financial or similar contributions towards defraying the costs of investigations. I have at no time led anyone to believe that participation would be allowed if financial consideration were received toward covering the cost of an investigation and, to my knowledge, no official or employee of the Board has led anyone to believe that monetary or "in kind" contributions were or could be a quid pro quo for participation. I do not know the basis for such an allegation, but potential parties cannot buy their way into the Board's investigations.

Question #10: How serious is the problem of alcohol and drug abuse in the various transportation modes?

Response: The Safety Board regards the problem of alcohol and other drug abuse in the various modes as one of the most serious threats to transportation safety today.

Since its inception, the National Transportation Safety Board has been concerned about the consequences of alcohol and other drug use by vehicle operators in our nation's transportation system. It is estimated that approximately 30 percent of the nearly 100,000 alcohol-involved deaths in the U.S. each year occur in transportation accidents. The Safety Board has investigated many transportation accidents in which operators' abilities have been impaired by alcohol or other drugs. In so doing, the Board has collected information on the involvement of alcohol and drugs in all modes. (Attachment #4). Yet, this information does not convey the full magnitude of the problem because of the lack of accurate and complete data on alcohol and other drug involvement in crashes in most transportation modes.

In the last four-year period alone, the Board has investigated 18 railroad accidents in which alcohol or other drugs were either a contributing factor or a primary cause. These accidents claimed 13 lives; the property damage alone was estimated at more than $25 million. In six of the rail rapid transit accidents investigated or under investigation by the Safety Board, alcohol and/or other drugs were involved; 16 persons were killed, more than 499 persons were injured and property damage was reported in excess of $5.8 million. In aviation, Board records indicate that about ten percent of all fatal general aviation accidents involve alcohol, as do about seven to eight percent of all commuter airlines/air taxi fatal crashes. The percent of alcohol involvement in fatal recreational boating accidents may be as high as 75 percent. In the highway mode, alcohol is estimated to be involved in approximately 54 percent of fatalities, which equals 23,500 deaths annually, and is the leading cause of death for those 16 to 24 years of age.

As dramatic and moving as these fatality statistics are, we recognize that they portray only a part of the tragic picture painted by the consequences of alcohol and drug abuse. Consider the impact on the lives of those who felt the impact of just one alcohol-related train crash in Livingston, Louisiana. As a result of this accident, approximately 3,000 people who lived within five miles of the accident site were evacuated for periods as long as two weeks. Many of their homes were burned or destroyed. Clean up of the site took more than a year. Property damage and losses have been estimated to be in the tens of millions of dollars.

Question #11: Do you think the various modal administrations and modes are adequately addressing this problem? Have they been responsive to NTSB recommendations on this?

Response: While substantial progress has been made by most of the modal administration in addressing the problem of alcohol and other drugs, the Safety Board is not convinced that a complete and consistent federal program is yet in place. Consider, for example, the confusing and inconsistent manner in which federal regulations deal with alcohol and drug impairment in the various modes:

In aviation the FAA rules require an abstinence period of eight hours and a blood alcohol content limit of 0.04 percent for a pilot beginning a flight, and a ban on any drug use which is "contrary to safety."

In the highway mode, the Bureau of Motor Carrier Safety rules, which apply to all drivers for motor carriers involved in interstate commerce, state that there must be a four-hour abstinence period before duty, and there is no blood alcohol level minimum limit; so therefore, presumably the driver may ingest any amount of alcohol which, in up to four hours before duty, will not bring the alcohol level to a greater amount that what state laws prohibit. Or, in other words, in most cases a 0.10 -- legally drunk. Further, some drugs are prohibited by the BMCS laws.

In rail there is no pre-duty abstinence period, but there is a 0.04 percent blood alcohol limit; and operators covered by FRA rules may not possess or use controlled substances or be impaired by them while on duty. There currently are no rules regarding light rail or subway, so presumably an operator, subject to any state laws, could consume any amount at any time prior to duty.

The Coast Guard rules prohibit operation of a vessel in a "negligent manner or while intoxicated," but no pre-duty drinking limits are prescribed nor is an intoxication level prescribed. We understand that a rulemaking effort is now underway within the Coast Guard to address intoxication limits.

The Safety Board believes that there is no level of alcohol or other impairing drugs in the body that can be conclusively presumed "safe." We have recommended to the FAA and the FRA in both their respective rulemakings on this issue, that the allowable level for air and train crew members should be none (no measurable alcohol) not 0.04 as these rules now specify. There should be a common, consistent level of zero BAC specified for all commercial vehicle operators in all modes of transportation -- not 0.04 percent in rail and air or 0.10 percent in highway and no specified level in marine.

Unfortunately, the FAA has refused to modify their alcohol rule and lower their 0.04 percent to "under the influence" threshold, in spite of convincing evidence supporting such action which the Board and others have submitted to the FAA.

Question #12: Do you think legislation is necessary to address some of the issues related to alcohol and drug abuse? Any particular issues?

Response: In testimony before the Senate Judiciary Committee last September and the Senate Commerce, Science and Transportation Committee in February this year, the Safety Board identified several issues on federal, alcohol, drug and transportation regulations in the various modes. One issue, the inconsistency of federal regulations across modes is described in the previous response. As we have stated before, the Safety Board believes that the only allowable level of alcohol in transportation operators in any mode is none. All professional transportation operators should be required to be alcohol and drug free while on the job.

For this reason I recommended that the scope of Senator Thurmond's legislation (S. 860) be broadened to include common carriers in all modes of transportation, including interstate trucking and rail rapid transit. Safety would also be served by a consistent specification (in federal regulations) of what impairing substances are prohibited and a precise definition of what constitutes impairment.

PRE-HEARING QUESTIONS OF THE MINORITY AND THE ANSWERS OF MR. BURNETT

Aviation Safety Record

Question #1: Last year, we saw a near-record number of fatalities aboard U.S. air carriers. You have spent the past four years at the Board looking at the condition of the U.S. airline industry with respect to safety. What do you believe can be done 1) by the FAA, and 2) by the air carriers themselves, to improve upon the safety record of the airline industry?

Response: Because the probable cause determination remains open in several of the accidents that resulted in last year's near-record number of fatalities aboard U.S. air carriers, it would be unwise for me to generalize an answer as to what the Federal Aviation Administration could or should do in their aftermath.

Nevertheless, without prejudging the accident investigations that remain open, my experience with the Safety Board has led me to the conclusion that an essential area in which to look for improvement is the scope, depth, frequency and philosophy of FAA surveillance.

Scope, depth and frequency are relatively self-explanatory, but I would like to amplify what I mean by the "philosophy" of FAA surveillance. My perception, based on he the Safety Board's accident investigations, is that increasing the number of FAA inspectors will improve aviation safety. But in order to get the maximum effectiveness from an increase in staffing, I believe FAA inspectors must be trained and encouraged to view their roles as significantly more than tracking the paper trail. I'm reluctant to use the term for fear of overstating my position, but there is need for a more adversarial posture on the part of inspectors; more scepticism; more of a "show-me" or tax-audit philosophy in order for FAA surveillance to meet its goals.

Another FAA initiative I would encourage is a systematic review of what I would term existing "regulatory minimums." All of us whose work involves aviation safety have heard repeatedly that the safety regulations are "minimums" and that most carriers consistently set higher standards for themselves. If this is true, and I have little doubt that for the most part it is true, the question that naturally arises is why don't the regulations "come up" to the safety level of prevailing industry practices.

The benefit of raising the regulatory minimums to reflect the essentially de facto standard would be to discourage carriers from compromising on current safety levels, and to require those who operate closer to current minimums to raise their standards, thereby eliminating any apparent economic advantage associated with lower safety standards.

Air carriers also have a responsibility that goes beyond meeting the federal rulebook. Among the most effective approaches to maintaining safety I believe they can take is maintaining the carrier's chief safety officer at the highest levels of the organization's structure. Along with the visibility and prestige of the role must come the authority to cut across organizational divisions and give teeth to the nearly universal carrier representation that "safety is our number one concern."

Looking particularly beyond the larger, longer-established carriers, I see a need for the industry to work toward establishing personnel policies and strategies that will stabilize the pilot work force. Without increased stabilization the industry will continue to face the problems associated with turnover that affect safety, the most notable of which is low-time pilots who have minimal training and experience in the equipment they are operating.

Question #2: In light of recent criticism of the air traffic control system and controller staffing and experience levels, do you think the NTSB should undertake an update of its review of the ATC system?

Response: The Safety Board continues to have concern over the safety margin in the air traffic control system, but the accident investigation workload has been such that we do not have the resources available to undertake another full-scale investigation of the status of the ATC system.

However, we have undertaken a special investigation of an aspect of the ATC system. Specifically, the project deals with the problem of runway incursions, a special category of near-collisions that would not become a part of the near mid-air collision statistics. One of the investigations conducted as a part of this special investigation — incidentally involving two DC-10s with 501 persons on board -- has already led to the issuance of safety recommendations. We anticipate completion of the project this Spring.

Further, I would like to make it clear that other aspects of the ATC system's safety continue to be addressed on an accident-specific basis. For example, the role of ATC has been given extensive consideration in connection with the crash of Delta Flight 191 at Dallas/Ft. Worth Interntaional Airport last August 2, and the Henson Airlines crash in Virginia last September 23, 1985. The Safety Board will not hesitate to speak out in the form of safety recommendations should the evidence warrant it.

Prior Record at NTSB

Question #3: Last year, several articles critical of your management style at the Board were written. In particular, it was alleged that your "aggressive and authoritarian style" caused a "brain drain" at the Board. What has been your reaction to these reports? In your view, have the recent departures in accident investigators and other experts diminished the quality of the Board's work?

Response: There have been articles in which individuals have expressed critical views of what has been called my management style. Unfortunately, largely lost in the shuffle have been distinctions between style and substance, between personality and purpose, and, as your question suggests, between aggressive and authoritarian management.

No doubt, I have been aggressive in attempting to stretch Board resources. I have, for instance, focused the attention given to our surface mode responsibilities and increased the safety payout by directing changes in criteria for rail and highway investigations. I believe such efforts, along with my vocal and visible advocacy of surface-mode initiatives, such as the successful push for a federal rule dealing with the problem of drugged or drunk railroaders, may have left some people with the impression that the Board was giving diminished attention and resources to aviation responsibilities.

The fact is, however, that not only has the Board not diminished the attention given to its aviation responsibilities, the resource allocation for aviation has actually increased during the time I have been a Board Member. Specifically, budget documents prepared more than a year ago showed that in fiscal year 1980 26 percent of our on-Board personnel had exclusively aviation responsibilities. The comparable figure for FY 1985 was 33 percent. In the current fiscal year the number remains at 33 percent.

In actual numbers, despite a loss of 87 filled positions Board-wide between FY 1980 and FY 1986, the Board now has only three fewer positions filled in the aviation-exclusive category than it did in 1980. Alternatively, if we compare our present aviation staffing against FY 1981 -- immediately preceding my first year with the Safety Board -- we find an increase in the aviation-exclusive category of 14 during a time frame in which Board-wide personnel losses numbered 32.

One headline writer summarized a report on the loss of aviation-related personnel by the NTSB during 1985 as a "brain drain." In attempting to assess how well the rhetoric matches reality, there are two factors that should be considered by way of background:

A. Resource management has forced us to generally impose a tight ceiling on employee grade-level advancement. This, unfortunately, creates an inducement for employees to seek promotions or career advancement elsewhere.

B. A period of reductions in force (RIFs) and the re-hiring rights of those affected had placed a bottleneck on employee movement and reduced the chances of finding private industry employment. The RIF effect had dissipated by last year and an improving economy had made private employment more accessible.

Nevertheless, during 1985 the Safety Board's loss of personnel with aviation-related work responsibility was only two greater than the average of the three post-RIF years, that is 18 instead of an average of 16.

As to the question of whether the loss of such technical personnel has affected the quality of the Board's work, it is apparent that employee turnover usually represents a loss of valued experience. However, I feel justified in saying that the Safety Board has been most fortunate in being able to attract new employees with generally superior academic and professional credentials, while promoting others who have gained invaluable experience in headquarters and field operations.

Since most of the focus has been on the impact on the Board's aviation accident investigation staff, one statistic is illustrative. In recent memory, the number of full time equivalent positions for our Aviation Accident Division has been eight professionals (GS-14) and one supervisor (GS-15). The Division provides investigators-in-charge and report writers for all major aviation accident investigations, as well as for major foreign investigations. The average time with the NTSB (and its predecessor organization) for those eight investigators in 1981 was 10.6 years. The comparable current number is 15.6 years. (Even with the scheduled retirement of a senior accident investigator at the end of the month, the "current" level of "on-Board" experience will be 13 years -- still well in excess of the 10.6-year level of five years ago.)

Question #4: Given your more than four years at the Board, the majority of which has been while serving as its Chairman, why do you want to be confirmed to another five-year term?

Response: I seek confirmation to another five-year term as a Member of the National Transportation Safety Board because my enthusiasm and energy for the work of the Board remains undiminished since my initial appointment. In fact, I now have a greater sense of mission because of the safety initiatives I have undertaken and wish to further, such as combatting drunk driving and alcohol abuse in other modes of transportation; improving general aviation and airline cabin safety; and increasing the Board's use of human factors analysis in accident investigation.

Priority Safety Areas

Question #5: What areas of transportation safety would you give priority to during a second term at the Board?

Response: During a second term as a Member of the National Transportation Safety Board I would advocate priority attention be given to the question of the adequacy of FAA surveillance and the adequacy of the margin of safety in the air traffic control system through accident and incident investigations; to increased refinement of our understanding of the role human factors can play in accident causation and prevention; to strategies for further reducing carnage on our nation's highways, with particular attention to the role of trucks and professional truck drivers.

Implementation of NTSB Recommendations

Question #6: Do you believe the safety recommendations now made by the Safety Board should be made mandatory? Please expand, indicating why you do or do not.

Response: I firmly believe that safety recommendations offered by the Safety Board should not be mandatory.

Experience has shown that the regulatory process, with the rulemaking and other requirements of administrative law, is time-consuming, costly, and places heavy demands on government personnel. Given the fact that this Nation already has well-defined regulatory agencies for the transportation modes, I believe there would be unnecessary duplication of effort to create a parallel structure within the Safety Board.

Another consideration is that should the Safety Board ever have power to impose regulations it would inevitably be drawn into the issue of the adequacy of those regulations in subsequent accident investigations. This would critically jeopardize our reputation for independence and public reliance on the fact that the Safety Board does not have an institutional interest in the outcome of its investigations.

I'd also note that the fact that the Safety Board does not have direct regulatory impact means that as an institution the Board is not the target of special-interest pleadings. This circumstance also serves to preserve our independence.

NTSB Qualifications

Question #7: You came to the Board in 1981 with essentially no transportation or safety experience, meaning that over the past four years you have had a great deal of on the job training. Do you now view your lack of technical experience as a detriment or advantage to succeeding as a Board Member? Would you support legislation mandating that all five Board Members be technically qualified?

Response: It is true that I believe my principal qualification for a second term as a Member of the National Transportation Safety Board is the wealth of experience gained since being sworn to my first term in December 1981. Whether my earlier lack of technical experience was an aid or detriment is a difficult question. I think it is best addressed in the context of your question about requiring technically qualified Board Members.

I would not support legislation mandating that all five Board Members be technically qualified. My principal reason is drawn from my own experience. I believe the fact that I joined the Safety Board with no prior technical expertise made me more receptive to learning about all of the modes of transportation without preconceptions about how they work, or how they should work.

Generally speaking, even technically qualified Board Members have had expertise in only one mode of transportation. That left them with essentially no technical qualification in four other modes as well as in hazardous materials transportation. Their experience in mastering the other modes, as well as my own experience at the Board, suggests strongly that having to learn all five modes is not an insurmountable task.

The overriding reason for not supporting mandatory technical qualification for all Board Members is that I believe absent that requirement there is a markedly better chance that membership on the Board would include one or more persons with a public-policy or public-advocacy background. Because the Board has no regulatory or enforcement powers we must accomplish many of our goals in the public-policy arena. I believe this is a strength I have brought to the Board that is the equal of any technical competence I might have possessed.

PRE-HEARING QUESTIONS OF SENATOR KASSEBAUM AND THE ANSWERS OF MR. NALL

QUESTION #1: What experience in your background makes you qualified to be a member of the NTSB? Do you believe you have any unique qualifications for the position?

RESPONSE: As an instrument-rated pilot with a commercial rating (single engine, land), I regularly use all elements of the national airspace system, from Flight Service Stations to ARTCCs. I have owned, flown and maintained several aircraft since 1974. I have represented pilots and aircraft owners in licensing matters, insurance claims, accidents and one mid-air collision.

I hold a ground instructor's rating and have operated Nall Aviation Enterprises, a ground school for private pilot applicants, since 1978, through the community college system and at the Johnston County Airport. Pilot training areas consisted of aerodynamics, weather, regulations, navigation, powerplant operations and safety matters. I have authored several aviation articles in national aviation magazines.

As a trial lawyer in a civil litigation law firm and sole practice, I have represented both plaintiffs and defendants in various automobile, truck and grade crossing accidents. This experience regularly involved examination of witnesses, investigation of the causes of accidents, coordination of investigations with law enforcement agents and private investigators in preparation for trial. I have also maintained an active civic interest in substance and alcohol abuse, especially as that problem impacts upon transportation issues.

As to unique expertise, I feel I would bring to the Board an interest and emphasis in general aviation safety.

QUESTION #2: In your opinion, do you qualify as one of the three technically qualified members of the NTSB, appointed on the basis of "technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation", as required by the Independent Safety Board Act of 1974? Please explain.

RESPONSE: In my opinion, I would qualify as one of the three technically qualified Board members. My flying experience and operation of a ground school qualifies me to understand and apply insight into human factors elements of flight safety and aviation regulation. My experience as an active trial attorney representing aircraft owners and pilots in licensing and accident matters, and motorists involved in highway incidents has allowed me to gain first-hand knowledge of accident reconstruction and analysis of factual data to reach conclusions as to legal liability.

QUESTION #3: In the 97th Congress, legislation was proposed which would increase the minimum number of technically qualified Board members from three to five. Would you support the enactment of such legislation today? Explain.

RESPONSE: In my opinion, the blend of three technically qualified Board members along with competent, diligent non-qualified Board members who have substantive experience in other areas of human endeavor can create a balance of diverse interests compatible with the NTSB's mission. I agree that there should always be at least three persons with technical

qualifications. Non-technically qualified persons could actually enhance the Board's effectiveness by providing insight from other disciplines which might not be attainable with a strictly technically qualified Board.

QUESTION #4: What was the nature of your work as an attorney for Aero Contractors, Ltd., of Smithfield, North Carolina, which you have described as an aviation contractor with various federal agencies? Are you still involved with that company?

RESPONSE: I am currently corporate counsel for Aero Contractors, Ltd., an aviation contracting business located in Smithfield, North Carolina. It has operations contracts primarily with the armed services for special purpose flying, and also services and maintains aircraft for the public. I also serve as corporate secretary, which position I will resign if confirmed.

QUESTION #5: What was the nature of your work with the Federal Aviation Administration when you worked for the agency while in college?

RESPONSE: In the spring of 1962, I worked in downtown Atlanta for the newly established Southern Region office, as a clerk-typist (GS-3) in the Personnel Division. In the summer of 1962, I was re-appointed to a temporary position as a clerk-typist (GS-4), again in personnel, primarily preparing job vacancy notices. In the summer of 1963, I was re-appointed to a temporary position as a file clerk (GS-3) in the newly constructed Southern Region office in Hapeville, Georgia.

QUESTION #6: Several published articles are listed in your biographical statement. Are any of these writings concerned with aviation safety? Have you done extensive research in that area?

RESPONSE: One of the articles related to aviation safety, the effects of carburetor icing in flight. I have not done extensive technical research in this area; my experience in aviation safety lies in actively flying and teaching aviation safety.

QUESTION #7: You are the co-founder, director and secretary of an alconolism rehabilitation center. Are you aware of the issues related to alcohol and drug abuse in the transportation industry? Do you believe your prior experience will be helpful in dealing with such issues at the Board?

RESPONSE: I am well aware of issues relating to alcohol and substance abuse, not only in transportation matters, but in other social contexts as well, because of a substantial law practice representing parties in domestic relations cases and some criminal defendants. Alcohol and substance abuse is a substantial social, economic and transportation problem, deserving the best of creative energies from every governmental or institutional agency concerned with the issue. I firmly believe my prior experience will be most helpful in dealing with alcohol and drug abuse in the transportation industry.

QUESTION #8: How serious is the problem of alcohol and drug abuse in the various transportation modes?

RESPONSE: Results of an NTSB statictical study issued in May 1984 confirmed that alcohol involvement is a larger problem in general aviation than had been previously suggested. Using fatal accident data from 1975 through 1981, the Board found that 10.5 percent of the conclusive toxicological tests of fatally-injured general aviation pilots show alcohol in their blood.

There was no alcohol involvement found in any accidents of scheduled service airlines flying large aircraft But of post-mortem tests made of pilots in commuter and "air taxi" accidents, 6.4 and 7.4 percent, respectively, showed alcohol.

More than half of fatal highway crashes involve alcohol. A Federal Railroad Administration-funded study showed that 19 percent of 234,000 workers surveyed at seven major railroads were repetitive excessive drinkers. Because of its belief that alcohol played a large part in train accidents, the NTSB in 1983 recommended to the FRA that it prohibit alcohol for a specified period before working, require toxicological testing of surviving train crewmembers and improve railroads' reporting of accidents and incidents involving the use of alcohol or drugs.

QUESTION #9: Do you think the various modal administrations and modes are adequately addressing this problem? Have they been responsive to NTSB recommendations on this?

RESPONSE: Now that public sentiment and studies by the NTSB and other concerned groups have disclosed abuses of alcohol in transportation accidents, the various modal administrations seem to be increasingly attentive to the problem and responsive to NTSB recommendations in this area.

QUESTION #10: Do you think legislation is necessary to address some of the issues related to alcohol and drug abuse? Any particular issues?

RESPONSE: I am not now prepared to propose specific legislation to deal with the broad issue of alcohol and substance abuse. It is as much a social problem as it is a legal one. The NTSB has certainly stated emphatically its interest in this issue as it impacts on transportation safety.

QUESTION #11: In your opinion, which areas of transportation safety merit special attention by the Board? Do you believe enough is being done in these areas at this time? In which areas, if any, do you take a special interest?

RESPONSE: In my opinion, aviation transportation safety issues will continue and should continue to claim most of the Board's resources of time and research, primarily because there is not another entity which has the broad experience to investigate accidents and issue safety recommendations. The Board should exert more of its concern for the effects of deregulation on safety policy and practices, dissemination of safety information, general aviation training, dissemination of weather information to general aviation users, crashworthiness, use of airspace as it effects potential for mid-air collisions, air traffic control efficiency/safety in view of substantial increase in air traffic volume and research into pilot judgment/human factors.

With regard to surface transportation, I would also take special interest in alcohol and substance abuse effects on surface transportation safety. While major aviation accidents demand much public attention, highway death attributable to alcohol certainly demands more of the NTSB's attention.

Other areas of special attention include: training and regulation of truck drivers carrying hazardous materials, communication equipment on board trains, marine emergency position indicating radio beacons (EPIRBs), updating CVR/FDR equipment and consideration of extension of CVR/FDR requirements to commuter aircraft.

QUESTION #12: NTSB special studies, unrelated to any particular transportation accident, are very helpful to the Congress in evaluating problems in the various transportation modes. If

confirmed as a member of the Board, are there additional subjects that you believe merit such reports?

RESPONSE: In answer to other prior questions, particularly Question #11 above, I have indicated areas of concern which would be the subject of special studies; however such studies would have to be prioritized and chosen carefully because of the limited resources of the Board and its staff.

QUESTION #13: Given current budgetary limitations, how would you prioritize NTSB activities?

RESPONSE: In aviation safety, concern for the air traffic control system efficiency to handle an increasing volume of

QUESTION #14: Do you believe the Department of Transportation and its modal administrations, such as the FAA, have been responsive to NTSB recommendations? What about industry and other interested groups? If they have not been responsive, why not? Do you have any recommendations for how they could be made more responsive?

RESPONSE: Department of Transportation and its modal administrations have generally been responsive to NTSB recommendations. Aviation industry groups have done an excellent job in disseminating NTSB recommendations to users of the system. Because of the non-regulatory nature of the NTSB, it must aggressively follow up on its recommendations in an organized, effective manner. In instances where implementation has been slow or insufficient, the Board should continue to address the specific safety item to the appropriate agency. Ultimately, an informed public and an informed Congress will demand implementation, and the NTSB should renew its efforts at dissemination of safety information and recommendations to the public through the public and industry media.

QUESTION #15: Private transportation accident specialists express frustration at being barred from NTSB investigations. They claim that the Board could save time and money by incorporating them in the process. What is your view on this?

RESPONSE: The Board is required by law to investigate all civil aircraft accidents and determine and publicly report the facts, conditions, circumstances and probable causes of such accidents. It is not the Board's purpose to determine the rights or liabilities of anyone. To diverge from the Board's current position allowing the "party system" participants would involve the Board in litigation controversies among claimants and insurers, interfere with the efficient investigation by the investigator in charge and NTSB staff and subject the Board to possible criticism for its lack of independence and objectivity. Investigators of the Board have traditionally considered and should continue to consider suggestions and input from every source, without limitation, consistent with the foregoing policy. Because of my lack of dealing with the issues of involvement of private investigators on a day to day basis as a Board member, I find it difficult to be more specific in delineating the exact boundaries of private involvement.

QUESTION #16: In the past, it has been alleged that some Board members have sought to interfere in or influence the Chairman's administrative duties rather than concentrating on policy issues. What is your view of the proper role of a Board member? The Chairman?

RESPONSE: The Chairman is the chief executive and administrative officer of the Board, and exercises responsibility for personnel matters, distribution of business among the Board's personnel and the use and expenditure of funds. 49 U.S.C. 1654(j). Policy decisions, as distinguished from administrative or executive decisions, are clearly reserved to the Board members. However, the delineation between administrative matters and policy matters is not always clear-cut. Close questions should normally be resolved in favor of it being a policy matter, requiring Board decision.

PRE-HEARING QUESTIONS OF THE MINORITY AND THE ANSWERS OF MR. NALL

1. What experiences do you believe make you qualified for a position as a Member of the National Transportation Safety Board? What unique expertise do you feel you could bring to that position?

As an instrument-rated pilot with a commercial rating (single-engine, land), I regularly use all elements of the national airspace system, from Flight Service Stations to ARTCCs. I have owned, flown and maintained several aircraft since 1974. I have represented pilots and aircraft owners in licensing matters, insurance claims, accidents and one mid-air collision.

I hold a ground instructor's rating and have operated Nall Aviation Enterprise, ground school for private pilot applicants, since 1978, through the community college system and at the Johnston County airport. Pilot training areas consisted of aerodynamics, weather, regulations, navigating, powerplant operations and safety matters. I have authored several aviation articles in national aviation magazines.

As a trial lawyer in a civil litigation law firm and sole practice, I have represented both plaintiffs and defendants in various automobile, truck and grade crossing accidents. This experience regularly involved examination of witnesses, investigation of the causes of accidents, coordination of investigations with law enforcement agents and private investigators in preparation for trial. I have also maintained an active civic interest in substance and alcohol abuse, especially as that problem impacts upon transportation issues.

As to unique expertise, I feel I would bring to the Board an interest and emphasis in general aviation safety.

2. As you know, the Independent Safety Board Act of 1974 requires that "at any given time, no less than three members of the Board shall be individuals who have been appointed on the basis of technical qualifications, professional standing,and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation." In your opinion, would you qualify as one of the three technically-qualified Board Members? Please elaborate, citing specific experience to support your assertion.

In my opinion, I would qualify as one of the three technically-qualified Board Members. My flying experience and operation of a ground school qualifies me to understand and apply insight into human factors elements of flight safety and aviation regulation. My experience as an active trial attorney representing aircraft owners and pilots in licensing and accident matters, and motorists involved in highway incidents has allowed me to gain first-hand knowledge of accident reconstruction and analysis of factual data to reach conclusions as to legal liability.

3. In the 97th Congress, legislation (S.1936) was reported by the Commerce Committee increasing the number of technically-qualified Board Members from a minimum of three to five. Would you support the enactment of such legislation today? If not, why?

In my opinion, the blend of three technically qualified Board Members along with competent, diligent (non-qualified) Board Members who have substantive experience in other areas of human endeavor can create a balance of diverse interests compatible with the NTSB's mission. I agree that there should always be at least three persons with technical qualifications. Non-technically qualified persons could actually enhance the Board's effectiveness by proving insight from other disciplines which might not be attainable with a strictly technically-qualified Board.

4. The National Transportation Safety Board is an independent Federal agency. If confirmed as a Member of the NTSB, what philosophical approach for dealing with the Executive and the Legislative Branches would you bring to that position?

The NTSB has a unique role in educating the public by dissemination of accident investigation information. The Board shares with the Legislative Branch the responsibility for oversight of other related Executive Branch agencies, and the relationship between the Board, the Legislative branch and related Executive branch agencies should be one of cooperation and positive interaction.

5. Would you please describe for the Committee the areas of transportation safety you think require increased examination by the Safety Board?

Increased attention by the NTSB should be given to general aviation, whose safety record has improved in the last several years, but still needs substantial improvement. Renewed emphasis should be given to crashworthiness, better dissemination of weather data and improved initial and recurrent pilot training, particularly with concern for hazardous weather avoidance techniques. With regard to commercial aviation, obvious attention should be given to the effects of deregulation and renewed concern for maintenance and practices.

6. There is a long-standing concern that other agencies and those in industry do not adopt safety recommendations that have been made by the Board. In these situations, what steps would you take as a Board Member to urge increased implementation of NTSB recommendations?

The Board must aggressively follow up its recommendations in an organized, effective manner. In instances where implementation has been slow or insufficient, the Board should continue to address the specific safety item to the appropriate agency. Ultimately an informed Congress and an informed public will demand implementation; hence, the Board must continue its efforts to keep Congress informed and to make public pronouncements in industry press, secular media and direct contact with industry groups.

7. Do you believe the safety recommendations now made by the Safety Board should be made mandatory? Please expand, indicating why you do or do not.

I do not believe the safety recommendations now made by the Board should be made mandatory. There is already a sufficient regulatory framework in which safety recommendations can be implemented.

8. Apart from accident investigations, the NTSB often prepares special studies aimed at the prevention of transportation accidents. Several of these studies are now underway at the Board. If confirmed as a member of the NTSB, what specific priority areas would you recommend be initiated for study, in addition to those already underway? Are there any areas that you believe the Board should stay away from in conducting these studies?

In my opinion, special studies may be a more effective method of predicting problem areas than the study of a particular accident within itself, particularly with regard to general aviation accidents. Studies, once conducted, need to be continually reviewed and updated, as the aviation fleet ages. I would encourage further inquiry into weather-related accidents, "pilot error"/judgment incidents, maintenance/mechanical problems and human factors research.

9. Recent media reports have indicated an increasingly high turnover of Safety Board staff, many of whom are experts in various areas of transportation safety. If confirmed as a Board Member, what steps would you take to reverse this trend?

Without a better understanding of the day-to-day working relationship between the Board Members and the staff, I cannot answer this question with specificity. However, from my experience and my record of working with private and public groups, I am very sensitive to employee morale. Traditionally, the NTSB's influence over aviation and transportation safety has been due to its credibility and competence. Thus, the Board should attempt to attract staff with the best technical credentials and strong dedication to transportation safety. I would emphasize openness, fairness and candor in Board/staff relationships.

10. The President has nominated you for a Democratic position at the Safety Board. What political affiliations and activities have you conducted that would indicate that you are a Democrat?

In 1960, as an eighteen year older, I registered to vote in Atlanta, Georgia, as a Democrat. My first vote was for John F. Kennedy in the 1960 presidential election. I have never registered or voted as an Independent or Republican, in my residences in Georgia, South Carolina, North Carolina or Virginia.

I began my active role in Democratic politics in 1976 in the Jim Hunt for Governor campaign as Co-chairman of the Johnston County "Friends of Jim Hunt" fund-raising effort. I have regularly attended county-wide and district-wide Democratic conventions and precinct meetings since 1976. From 1976 to 1978, I was advisor of the Johnston County Teen Dems organization. I have contributed to those Democratic candidates shown in the questionnaire previously submitted. The only Republican candidate to whose campaign I have contributed was Steve Little, who ran for district attorney in the Marion, North Carolina, area, outside my district. I was Steve's youth minister and pastor during his teen years and developed a close relationship with him. I believe I contributed $200 to his unsuccessful campaign around 1980. I have not made any other contributions to Republic or Independent candidates or causes, nor have I lent my name to any Republic candidate. My activities in Democratic politics has been primarily on a county and regional basis.

11. Your resume indicates that you are the operator of Nall Aviation Enterprises, a ground school. Precisely what is your involvement in this business? If confirmed, will you disassociate yourself from Nall Aviation Enterprises? If so, how?

I am the sole proprietor of Nall Aviation Enterprises, which is a ground school which was operated by me alone after 1978. If confirmed, I will dissolve that business and have no further activity or income related to it.

12. You also note that you are currently serving as attorney for Aero Contractors, Ltd., which has affiliation with various Federal agencies. What is the exact nature of your involvement? What Federal agencies are and have in the past contracted Aero Contractors?

I am currently corporate counsel for Aero Contractors, Ltd., an aviation contracting business located in Smithfield, North Carolina. It has operations contracts primarily with the armed services for special purpose flying, and also services and maintains aircraft for the public. I also serve as corporate secretary, which position I will resign if confirmed.

13. If confirmed, do you expect any continuing income from any transportation or aviation interests, apart from the sale of your law practice?

No.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 21, 1986.

Hon. NANCY LANDON KASSEBAUM,
Chairman, Subcommittee on Aviation, Senate Committee on Commerce, Science, and Transportation, Hart Senate Office Building, Washington, DC.

DEAR MADAM CHAIRMAN: I do regret that I am unable to appear before the Aviation Subcommittee to personally endorse the reappointment of James E. Burnett as a member of the National Transportation Safety Board. Because I feel that Mr. Burnett has done an excellent job during his first term, I would like to take this opportunity to highlight just a few of his accomplishments.

Since its inception, the Safety Board has performed an invaluable function in terms of transportation oversight, and the Congress has come to rely on its expertise a great deal in order to evaluate the safety of our national transportation systems.

Mr. Burnett, as Chairman, has been a particularly effective spokesman for the Safety Board, and thus for transportation safety. He dispelled initial skepticism of his lack of transportation background by applying his quick mind and considerable capability to grasp complex issues and place them in context and perspective. His obvious capabilities earned him in my estimation, sufficient respect in Congress to establish his credibility early on as someone to consult in matters of transportation safety.

Since he became a member of the Board, Jim has worked toward increasing the Board's overall effectiveness to impact transportation safety, and he has accomplished this at a time of curtailed resources. He has done so by putting emphasis on the prevention of accidents rather than just the investigation of them. His innovative approach to accident prevention and his relentless articulation of its importance has been a factor in the public accpetance of issues such as raising the drinking age to 21 and the use of safety seats.

Although the Safety Board's mandate requires an emphasis on aviation safety issues, Mr. Burnett has strived to utilize the staff's surface and marine resources in a more effective manner as well. By instituting a program of accident selectivity, based on issues which could provide the greatest safety payoff, he has greatly enhanced the Board's impact on the other transportation modes.

In the area of air transportation, Jim Burnett has been a compelling but objective proponent for safety. Insisting on the one hand that much-needed improvements be implemented, he also has been a responsible voice of reason in the midst of charges and counter charges regarding the air traffic control system. And as we have seen in our respective Aviation Subcommittees, Jim has made it a point to keep the Congress informed on the facts of this and many other aviation issues and has concurrently worked with the Federal Aviation Administration to iron out our differences.

As far the nuts and bolts of the Board, Jim Burnett has been instrumental in initiating major changes in the area of administration. These include the design and implementation of one of the most ad ed accounting systems in the federal government, as well as the establishment of a Board-wide microcomputer system aimed at increased productivity and enhancement of capabilities of the Board's laboratory computer.

Again, I believe that Jim Burnett has done an exemplary job during his first term and would urge the subcommittee's favorable consideration of his reappointment. I would also like to add, that should President Reagan nominate Jim for reappointment as Chairman of the Board, I would wholeheartedly endorse his reappointment.

With kind regards,
Sincerely,

JOHN PAUL HAMMERSCHMIDT,
U.S. Representative from Arkansas.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
March 21, 1986.

Hon. NANCY LANDON KASSEBAUM,
Chairman, Subcommittee on Aviation, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR SENATOR KASSEBAUM: I am pleased to present to your Committee, Joseph T. Nall, who has been nominated by the President for membership on the National Transportation Safety Board, and enthusiastically recommend his confirmation.

Joe and I have been close personal friends since high school days. He has distinguished himself in the practice of law in North Carolina for thirteen years and has been active in Democratic politics. His love for flying and his dedication to air safety will make him an ideal board member of the National Transportation Safety Board.

I heartily support his nomination and urge his timely confirmation.

Sincerely,

BILL NELSON,
U.S. Representative from Florida.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 21, 1986.

Hon. NANCY L. KASSEBAUM,
Chairman, Subcommittee on Aviation, Washington, DC.

DEAR MADAM CHAIRMAN: I regret my schedule is such that I am not able to personally present my good friend, Joseph Trippe Nall of Smithfield, North Carolina, to you and your committee at his confirmation hearing scheduled today for appointment to the National Transportation Safety Board.

It is important the members of this committee give careful consideration and attention to the background and qualifications of any candidate for appointment to this prestigious and essential board, and I am pleased to recommend for your consideration without qualification, my good friend, Joe Nall.

He graduated from high school and was the recipient of the Atlanta Journal Cup as best all-around student in the graduating class. At Furman University, he was a leader, being elected President of both his Freshman and Senior Classes and receiving scholastic honors each year he attended. After receiving his Bachelor of Arts degree, he enrolled in Southeastern Baptist Theological Seminary at Wake Forest and received a Masters of Divinity degree. Later he entered Wake Forest University School of Law, and while there, was awarded the American Jurisprudence and Corpus Juris awards for excellence in the study of Criminal Law and Procedure.

Mr. Nall was Associate Pastor of the First Baptist Church in his hometown and also served as minister of the Beth Car Baptist Church in Halifax, Virginia. Presently, he is active in his church and in community and civic affairs in Smithfield, and he has his own law practice there.

He is holder of a commercial airplane single-engine land license, Instrument rating, Ground Instructor rating and is the operator of Nall Aviation Enterprises, a ground school at the Johnston County Airport. He is an active pilot in and user of the national airspace system and a member of the Aircraft Owners and Pilots Association. Mr. Nall is a participant member of the lawyer panel of the Aircraft Owners and Pilots Association Legal Services Plan for representation of Pilots before the Federal Aviation Administration and the National Transportation Safety Board for license violations.

I am pleased to have the opportunity of recommending for your consideration my constituent and good personal friend, Mr. Joseph Trippe Nall. I am confident he will serve with distinction as a member of the National Transportation Safety Board.

Sincerely,

CHARLES O. WHITLEY,
U.S. Representative from North Carolina.

ROBERT ORTNER TO BE UNDER SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

MONDAY, MARCH 24, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 10:30 a.m., in room SR-253, Russell Senate Office Building, Hon. Slade Gorton presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member; Cassie Phillips, staff counsel, Patrick Windham, minority professional staff member.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. The hearing will come to order.

Dr. Robert Ortner has been nominated to be the Under Secretary of Commerce for Economic Affairs. At the present time he is the Commerce Department's chief economist. The Under Secretary for Economic Affairs advises the Secretary of Commerce on economic conditions and supervises the Department's statistical economic analysis and economic policy activities.

Economic Affairs is made up of several bureaus and offices within Commerce. Those offices and the bureaus collect, analyze, and distribute statistical economic and technical information to the public. The organizations making up the Economic Affairs Department include the Bureau of the Census, which takes censuses on population, housing, agricultural, et cetera, which is not under our committee's jurisdiction; the Bureau of Economic Analysis, which keeps statistics on gross national product, income, U.S. balance of payments, and so forth; and The Office of the Assistant Secretary for Productivity, Technology, and Innovation, which coordinates Federal technology transfer programs and Federal patent policy, helps small businesses improve productivity, and which includes the Office of Metric Programs, the Office of Strategic Resources, and the National Technical Information Service. The National Technical Information Service is the source of Federal, scientific, and technical documents which licenses Federal patents for some agencies, and houses the Center for the Utilization of Federal Technology, one of the technology transfer entities created by Stevenson-Wydler. Other organizations making up the Economic Affairs Department are the Office of the Chief Economist, which Mr. Ortner now heads; and the Office of Business Analysis, which ana-

60-129 O - 86 - 4

lyzes the status of specific industries. Its more elaborate function of providing sectoral analyses was transferred to the International Trade Administration, as were many of the functions of economic affairs.

The Commerce Committee authorizes OPTI and NTIS in annual authorization bills, usually included in authorization bills for the National Bureau of Standards. The rest of the programs have a standing authorization.

Economic Affairs' total budget request for fiscal year 1987, including OPTI and NTIS, but excluding the Census Bureau, which is 10 times larger, is $31 million. The President's budget proposes to phase out OPTI over the next 2 years. Congress rejected this proposal last year, although OPTI's funds were cut from $2.4 million to $1.7 million. Its proposal for fiscal year 1987 is $1.5 million, since revised by OMB down to $1.2 million, mostly for phaseout costs.

The administration has also ordered NTIS to study a proposal to turn its functions over to the private sector. NTIS is required to be self-sustaining except for its patent licensing functions, for which it received an appropriation of $536,000 in 1986. We will review these issues in more depth during the National Bureau of Standards' authorization hearings on April 10.

In the meantime, there are questions for Dr. Ortner about how Commerce proposes to carry out OPTI's functions, especially those imposed by Stevenson-Wydler, if OPTI is eliminated.

Dr. Ortner has been with the Department of Commerce for almost 5 years, during which he has been the chief economist for the Department. Before that time, he spent more than 15 years with the Bank of New York. Dr. Ortner obviously brings a great deal of experience to the position of Under Secretary for Economic Affairs, with background both in the public and in the private sector.

I understand, Dr. Ortner, that you would like to make an opening statement. I have here at the same time a statement very much on your behalf by Congressman Jim Courter, and we will certainly include that in the record, and you should be complimented by what he says.

I have your biography which will be printed in the record.

[The biographical sketch follows:]

JOHN C. DANFORTH, MISSOURI, CHAIRMAN
BOB PACKWOOD, OREGON
BARRY GOLDWATER, ARIZONA
NANCY LANDON KASSEBAUM, KANSAS
LARRY PRESSLER, SOUTH DAKOTA
SLADE GORTON, WASHINGTON
TED STEVENS, ALASKA
BOB KASTEN, WISCONSIN
PAUL S. TRIBLE, JR., VIRGINIA
ERNEST F. HOLLINGS, SOUTH CAROLINA
RUSSELL B. LONG, LOUISIANA
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
DONALD W. RIEGLE, JR., MICHIGAN
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
W. ALLEN MOORE, CHIEF COUNSEL AND STAFF DIRECTOR
RALPH B. EVERETT, MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: Ortner (Last) Robert (First) _____ (Other)

   Address: 2801 New Mexico Ave., Apt. 712 (Current residence)
   Washington, DC 20007

   U.S. Department of Commerce (Business)
   14th & Constitution Sts., NW
   Washington, DC 20230

2. Position to which nominated: Undersecretary for Economic Affairs
   Date of nomination: March 10, 1986

3. Date of birth: October 19, 1927 (month) (day) (year)
   Place of birth: Newark, NJ

4. Marital status: Married
   Full name of Spouse: Evelyn Mavis Ortner

5. Names and ages of children: Peter 28
   Nicole 25

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Pennsylvania	1945-49	B.S., Econ	1949
Columbia University	1952-54	M.S., Ph.D.	1954, 1960

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
6/49	9/51	Franklin Leather Goods Co.	Division St. Newark, NJ	Assistant to President
1/54	6/54	Columbia University	New York, NY	Assistant in Economics
6/54	6/55	Mid-European Studies Ctr.	West 57th St. New York, NY	Economist
7/55	6/61	Wharton School University of Pennsylvania	Philadelphia, PA	Lecturer
7/61	6/62	Wharton School University of Pennsylvania	Pentagon Bldg. Arlington, VA	Operations Research Consultant to USAF
7/62	12/64	Carl M. Loeb, Rhoades & Co.	40 Wall St. New York, NY	Financial Analyst, Economist
1/65	10/81	Bank of New York	48 Wall St. New York, NY	Senior Vice-President and Chief Economist
10/81	present	U.S. Department of Commerce	Washington, DC	Chief Economist

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

7/61--6/62	Wharton School University of Pennsylvania	Pentagon Bldg. Arlington, VA	Operations Research Consultant to USAF
10/81--present	U.S. Department of Commerce	Washington, DC	Chief Economist

STATEMENT OF ROBERT ORTNER

Dr. ORTNER. Thank you, sir.

We did submit an opening statement in writing for the record.

Thank you, Mr. Chairman. I am honored that President Reagan has nominated me to be Under Secretary for Economic Affairs in the Department of Commerce.

My career at Commerce began in 1981 when Secretary Malcolm Baldrige appointed me his chief economist.

I would particularly like to thank Secretary Baldrige for recommending me for this position. And I wish to extend special thanks to House Republican whip trent Lott and Congressman Jim Courter from my home State of New Jersey for their encouragement and support.

With the approval of the Senate, I look forward to continued service at Commerce and hope that I will be able to assist the Congress in their efforts to serve the public.

Mr. Chairman, I look forward to working with you and will now answer any questions you may have for me.

Dr. ORTNER. May I simply add, or repeat, that I am honored by this nomination, and I thank you for the privilege of appearing before you, and I look forward very much to working with you in the future.

Senator GORTON. What observations can you make as chief economist in the course of the last 5 years or so about the operations of the division which you now are about to head?

Dr. ORTNER. Mr. Chairman, my functions and operations during the last 5 years in economic affairs have been in the area of economic analysis and economics data. I have worked less time with the functions of OPTI and NTIS, as you are undoubtedly aware, and I am of course more familiar with some of the problems in economic affairs.

Senator GORTON. Can you describe what you have tried to accomplish in that position during these 5 years, and what you consider your triumphs to have been?

Dr. ORTNER. My what, sir?

Senator GORTON. Your triumphs to have been.

Dr. ORTNER. "Triumphs?" I thought you said "crimes."

Well, as the Department's chief economist I have been privileged to serve Secretary Baldrige, and I have worked quite closely with him, advising him on economic developments and the economic outlook, and advising him on economic policy issues for his deliberations in the Cabinet council processes and for his function as a Cabinet member.

During these 5 years, the Commerce Department has been a participant in the process of economic analysis and forecasting in the administration. We have participated in the Troika group meetings on economic forecasts. We have participated in working groups that have been established by the economic policy councils, and we have conducted a large amount of analysis on economic policy issues.

I have also developed a public process in explaining and interpreting economic data to the public and to the press, and I hope

that I have contributed to public knowledge of economic developments.

Senator GORTON. In the position for which you have been nominated, will you be reporting directly to the Secretary himself?

Dr. ORTNER. Yes, sir.

Senator GORTON. Tell me, if you will, have you observed at all, and what role do you think you will take in this new position, in supervising the activities of the Bureau of the Census?

Dr. ORTNER. Well, I intend to be an active supervisor and participant in their processes and in their work. I am already familiar with the kinds of things that they do in the area of economics. I am aware that they are gearing up for another census in 1990. I have not previously participated in those processes, but I am somewhat familiar with them and I expect to work actively to be certain that things proceed smoothly.

With regard to economics data, I am quite familiar with their releases, and therefore familiar with some of the problems that have developed recently, and hope to resolve these quickly.

Senator GORTON. As I pointed out in my opening statement, the administration has proposed to phase out the Office of Productivity, Technology, and Innovation, which carries out statutory responsibilities, including those dealing with Federal technology, patent policy, metric conversion, and critical materials.

What can you tell us about how specifically Commerce will fulfill these responsibilities if OPTI is eliminated?

Dr. ORTNER. First of all, even though OPTI is going to be phased out, we expect to keep an executive staff to supervise the continuing operations. Many of these operations of course have been turned over to the private sector, and these functions seem to be moving along very nicely. However there are some continuing statutory obligations that I am aware of, and I certainly would see to it that these obligations are fulfilled.

These would include things such as the national technology medal, the metric operations, and these functions certainly will continue.

In the areas where OPTI has already made provisions for commercializing technology through the research and development limited partnerships, and the binational research and development arrangements we can continue to supervise these things and encourage further development, and we intend to do that.

Senator GORTON. If, on the other hand, Congress determines that the proposal to phase out the office is unwise and continues it at roughly its present level, would you work aggressively to see to it that it carries out its statutory mandate?

Dr. ORTNER. Yes, indeed, I will.

Senator GORTON. Are you aware of the status of the study going on in the National Technical Information Service about transferring its function to the private sector?

Dr. ORTNER. I am aware that a study has been ordered and is underway. I understand that it is still in very preliminary stages, and that a report is due later this summer, and I will be very happy to share that with you. At this point, I have not seen any results of that study. I do not think any results exist yet.

Senator GORTON. Do you have any plans in mind to improve the way in which the service disseminates information?

Dr. ORTNER. I'm sorry, sir? I did not hear the question.

Senator GORTON. Do you have any thoughts about improving the way in which that Technical Information Service disseminates information?

Dr. ORTNER. I do not have any further thoughts at this point. I say "further," because I am also aware that NTIS has some studies underway to improve the means by which they disseminate this information. I agree that this process is highly important, and I will certainly familiarize myself with it, and do everything I can to encourage streamlining and improving this process.

Senator GORTON. The standard industrial classification codes are widely considered to be outdated. What steps, if any, do you believe should be taken to improve the codes and other similar industrial data, and can they be improved given our present tight budgets?

Dr. ORTNER. The process for improving updating these codes is already underway. The OMB has announced in the Federal Register that they intend to issue new codes this year, and have requested comments and suggestions from private industry or other interested parties. You are absolutely right in suggesting that these codes are out of date. The last revision I believe was in 1972. So that this set of revisions is long overdue.

We are geared up to use these codes. Commerce people, people from the Census and the BEA, participated in the working group that developed the new codes, and we are prepared to use them, both at Census and BEA.

They have made provisions in their outyear budgets for incorporating the new codes. I am not sure that these codes will be the last word on what ought to be done, but they did make an effort to upgrade the code system for service industries and new high-technology industries.

Since these industries are developing very rapidly, my impression is that these codes should be updated more than every 15 years, and I would hope that we can do it more frequently.

Senator GORTON. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Dr. Ortner, let me welcome you. Certainly we are pleased with the President's recommendation. You certainly have the background and experience, and we look forward to working with you on the whole group of matters that are going to come before this committee.

Looking over your background, I was very much impressed with your credentials. I am not so impressed with your political contributions, but then we do not expect you to be perfect.

Which you obviously are not, as we are not. Since the Department of Commerce has a lead role to play in trying to work out the deficit of trade we have, and since this committee has jurisdiction in that area, my question has to do with what your views are as an economist and what your recommendations are likely to be in this area to the Secretary as he moves ahead.

Myself and five other Senators had breakfast with the Secretary a couple of weeks ago and gave a report to him on our trade mis-

sion to Japan, and Korea, and Hong Kong. We talked about the extreme difficulties that we have there.

One of the things I would like to ask you, as we try and become more competitive in this free-for-all free-trade world out there, is what you think of the tax bills. There has been some criticism of the tax bill as it came out of the House, and also some criticism of some of the initiatives in the Senate Finance Committee, particularly with regard to that piece of tax legislation, that would discourage savings and equally and probably as important would discourage capital formation.

What is your view of that as an economist? Do you agree with those criticisms?

Dr. ORTNER. Well, let me thank you for your welcome and say it is a privilege to appear before you. I am not appearing, or not presenting myself as a perfect individual, or a perfect candidate, as you point out. I am aware of that.

Senator EXON. Well, you are an economist, Doctor, and they all fall into that category, you see.

Dr. ORTNER. Of imperfect?

Senator EXON. Yes.

Dr. ORTNER. Yes. I trust that I am not less perfect than average, sir.

There were some problems with the House bill for tax reform. My own feeling was that it went too far in eliminating investment incentives, and of course these are some of the things that we have already discussed and are concerned about, and will continue to be concerned about in the future.

I think the future health of this economy and this Nation depends very much on our research and development and innovation, because this is where the growth in the economy comes from growth in productivity, and growth in real output, real incomes, and improvement in our standards of living. I would hope personally that we can retain some of these provisions that we have in our current Tax Codes.

I think it is very important that we continue to encourage research and development and innovation and capital spending, which brings these things together into the industrial process.

The Senate proposals lean more in that direction, and therefore I think that they are better proposals than the House proposals.

Senator EXON. Thank you, Dr. Ortner.

My next question has to do with the overall effect, in your opinion, on the collapse of oil prices which, to use a typical comment by those of your profession that on the one hand it is this, and on the other hand it is another. I know that you have to answer the questions that way. But the free fall of oil prices and the announcement this morning that the OPEC nations have adjourned their conference and have not gotten together, and the open predictions this morning that oil prices could plunge to $10 a barrel, certainly have a lot of good features from the standpoint of our economy.

How serious is that, though, with regard to the international banking situation and the fact that a substantial portion—I think too much—of the loans of some of our international bankers that are part and parcel of our banking system could be further im-

paired with these plunging oil prices. I only mention Mexico as one example; there are others.

How do you view that? Are there any steps that we can, should, or should not take in this regard here in the Congress given that the oil price drop has effects, both good and bad in our overall economy? How serious is it? And are there not going to be some rough spots that we are going to have to ride over? Or do you again believe that the good in this case will in a relatively short time overcome any of the downside?

Dr. ORTNER. First of all, there are some pluses and minuses. I think it was Harry Truman who said, in the first place he wished he had a one-armed economist who did not always tell him "on the one hand this, and on the other hand that."

Senator EXON. That was Harry Truman, I believe, was it not?

Dr. ORTNER. I think it was.

Senator EXON. I believe so.

Senator FORD. As I walk in, you talk about Harry Truman?

Senator EXON. Yes; I thought it was Harry, but I am disappointed again.

Dr. ORTNER. We were just admiring Harry Truman, sir.

Senator FORD. I wish he would come back.

Dr. ORTNER. There are some crosscurrents both domestically and internationally. We import about one-third of the oil that we consume, and for that reason there is on balance a net benefit to the Nation in the near term. We will save if oil settles at $15 a barrel something like $20 to $21 billion on our oil import bill. This will help our balance of trade to that extent.

And I suppose it is something like the equivalent of a $20 plus billion tax cut that is bestowed on our country. In fact, my opinion is that it is much better than a national tax cut because our Government will not have to borrow the money to finance it. In that sense, OPEC may have to borrow the money to finance it. So we are that much better off.

Senator EXON. Would it follow along that line—I do not want to interrupt you; you had the rest of my question to answer—but would it follow along the lines that you have just outlined by commenting on the relationship between oil prices and taxes. With the "tax cut" that Americans could receive, through cheaper oil prices, would they be in a position then to absorb some increases in taxes to help balance the annual budget and arrest the skyrocketing national debt? My question is based upon an assumption that there is not any serious disruption. I assume the answer is yes.

Dr. ORTNER. Well, my personal opinion, sir, is that the saving in oil expense might be put to good use within the private economy to continue to help to streamline it with further capital spending, further research and development, to help make the United States more competitive. A $20 billion savings on our oil import bill compared with last year's trade deficit may not be quite a drop in the bucket, but it is not more than a few drops.

Our trade deficit last year was almost $150 billion. The benefit——

Senator EXON. Well, Doctor, I do not follow you. I am not an economist. I am not sure I understand. It seems to me that with oil

prices plunging, we would likely tend to import a higher number of barrels from abroad. Is that not likely?

Dr. ORTNER. We might consume more oil at $15 a barrel, or $10 a barrel than we did at $30 a barrel. I would assume that we will do that over the next year or two, but that may be at least as much due to faster growth in the economy. The economy has been sluggist recently, and the fourth quarter growth rate was less than 1 percent. This quarter may not be too much more than that.

As growth picks up, I think we will consume some more. I do not think that we will consume a great deal more in the immediate future because of the price drop. I do not think we are going to return to inefficient buildings, and maybe we will buy more larger cars, but they currently get twice or more the gas mileage than the old gas guzzlers did in the early 1970's. So we may get some pickup in consumption, but I do not think that it will be a massive pickup.

Meanwhile, the drop in oil prices has some other benefits. It will lower the inflation rate. Most people assume that inflation would be up sharply in 1986, partly because the economy is picking up, and partly because the dollar is going down, which will raise other import prices. The drop in oil prices will offset that.

Last year's inflation rate according to the broad GNP indexes was about 3.5 percent. Instead of it picking up, it may be down to 3 percent. And if we are lucky, maybe it will be less than that. That is also helping to lower interest rates, because inflation is one of the main factors underlying the general level of interest rate. Therefore, that will be of great benefit to the economy, and I hope that this process will be permitted to continue.

Now I have talked about some of the pluses, the benefits of the drop in oil prices. There are some problems. Would you want to get into those? Would you want me to pursue that?

Senator EXON. Yes. I think it is a key economic factor that we have to weigh as we look to the future. What, if anything, might the drop in oil prices do or threaten. In particular, how it might threaten our banking structure? Or, to put it another way, many large bankers today, international bankers, have loans on their books that are much less likely to be repaid in my view than those of farmers that we are closing out today in the Midwest.

If the same rationale is used for rating loans by the Federal regulators on the large banks with regard to their international portfolio as we are presently having in effect with regard to agriculture, I would think that we could have a major shakeup in our banking structure in these United States. I am wondering if you think that is a danger.

Dr. ORTNER. Well, you will understand that I am not an expert in bank regulation.

Senator EXON. No, but you are an economist.

Dr. ORTNER. This is a process that is supervised by the Federal Reserve Board. The Treasury Department is also involved in this. I am aware that there are problems with a number of individual banks. I have heard that a number of banks have made loans in the oil industry that were predicated on $30 or $35 oil, and of course at this point those loans do not look very good because they were speculating on the price of oil which did not continue to rise.

They were speculating on a price that was already inflated and higher than the free-market price was likely to sustain.

My impression is that these are problems of individual institutions, and not a problem of the overall banking system.

Senator EXON. How is that? The banking system is, is it not, backed up by the FDIC, which is a Federal agency?

Dr. ORTNER. Yes, sir. And the Federal Reserve Board. And my understanding is that our banking system will remain in good shape and will continue to be in good shape. There are some banks with problems loans. I do not even know at this moment who they are individually.

Senator EXON Well, Citicorp is one, but I do not expect you to know about their internal workings.

Well, let me ask my last question, then. International trade and the balance of trade is a real problem that the administration has been working on. One of the reasons that the trade imbalance is not worse than it is is the fact that we have had major contributions on the plus side for us because of agricultural products shipped overseas.

You are familiar, I believe, with the policies of the administration that you are going to have to help carry out. You may agree with them that we are going to continue to drive down the prices of domestically produced agricultural products, primarily grain and other things, and then we are going to get competitive in the international marketplace. And this is going to restore us to some kind of stability.

Do you honestly feel that this binge that we are on will work—that we are going to sell our way out of our agricultural difficulties, which is a prime part of our economy? Do you think we are going to sell our way out of that by producing cheap grain that can be sold overseas for less than the cost of production?

Dr. ORTNER. We have always been a large exporter of agricultural products. A large share of our production over the years has been exported. The dollar, as you know, went up on average against other currencies about 75 percent from 1980 to early 1985, and this effectively shut us out of many markets that we had been able to sell into over the years. That has been one of the main problems that we have had.

The dollar has now fallen about 25 percent on what we call a trade-weighted basis, that is an average against other currencies, since its peak a year ago against some of the other major currencies of the world, the dollar has fallen by more than one-third. Both agriculture and manufacturing industries have been hard hit by the high dollar. We are hopeful of seeing some improvement in the near future.

Another problem has been that other industrial countries have not been growing very rapidly, and to the extent that they have been growing it has been by exporting the United States. But my impression is that the European economies are beginning to perk up somewhat, and with a lower dollar I should think that later this year, and especially in 1987, we should be able to see a very clear improvement in our international business both for manufactured goods and for agricultural products.

Certainly we would hope that that will be the case. Our agricultural industry, I might add, in my opinion is a competitive industry in the world market. Our farms are very highly automated, and we have certain natural endowments of land and climate that I think will continue to make us competitive in this industry.

Senator EXON. Well, Doctor, I would suggest that you take a look at this overall proposition, because even though the economy might be improving in Europe, we have trade barriers that you people in Commerce are working on right now.

Dr. ORTNER. We are very concerned about those trade barriers. I think you know——

Senator EXON. And regardless of how low the dollar drops, if they are not going to let us ship agricultural products in there, or into other developed countries, to say nothing of undeveloped countries, then we have got a problem on our hands.

It seems to me that if you really focus only on the efficiency of production of the American farmer today, which is there, and ignore the costs of production of food in the United States as compared with the farmers who are heavily subsidized in other countries, then I suggest that we are heading for some serious, serious problems in the future which are going to involve the Department of Commerce. Because we cannot continue, in my opinion, to expect our farmers to produce grain for less than the cost of production and use that grain to help offset our international trade imbalance.

It is an extremely serious situation that I do not yet believe we have the total attention of the administration to. Thank you very much.

Dr. ORTNER. Thank you.

Senator EXON. Thank you, Mr. Chairman.

Senator GORTON. Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

Doctor, some things are very puzzling to me, and you allude to some of those. How well off are we when in the last 5 years we have gone another trillion dollars in debt, and the estimated $178 billion in interest for 1987 budget year is probably short of what it actually will cost us largely because of the use of mirrors and borrowing from Social Security, airport improvement fund, highway trust fund, and so forth? At the same time, 70 percent approximately of the goods we purchase in this country are imported.

The oil problem that we talk about you say is an institutional problem, and yet we look at the farmers going under as rapidly as we have ever seen it in our history. You talk about the growth in the last quarter was somewhat disappointing, and that same disappointment will be here in this quarter.

Now tell me about the long range as it relates to low oil prices. You say that will help in the near term, but what about the long term as it relates to the reduction in the price of crude?

Dr. ORTNER. Well, as I said before the drop in oil prices currently will help to reduce the inflation rate, and I think this will be very helpful for economic growth over the next couple of years.

Senator FORD. Well, we have had little inflation, and if you do not have some inflation what you save will not help you very much, as I understand it, or what you have does not appreciate very much without a little inflation.

Dr. ORTNER. I am not sure I heard or understood the question, sir.

Senator FORD. You go ahead and finish, and I will wait and ask another question.

Dr. ORTNER. I will just mention again that with inflation coming down currently, and I think it will come down this year, this will also help to lower interest rates which will help a number of important sectors in the economy. What I would be concerned about, and I think that this should be monitored in the future, has to do with the announcements from a number of oil companies that they are already beginning to cut back on their exploration and development.

If this continues, certainly it will have long-term implications for the oil industry and for the price of oil, and in the longer term—I guess we are talking about the 1990's. The oil companies themselves say that it takes them 4, or 5, or 6 years to bring a newly discovered well to the marketplace in finished products.

So I guess if they are cutting back drastically now, this might tend to reduce the supply of oil from what we otherwise would have had in the 1990's. If that is true, then I would assume the price of oil will move back up eventually.

Senator FORD. Well, what you are saying, Doctor, is that what some of us have been concerned about. We have billions of dollars in problem loans—I think it is six—in Dallas and Houston. There is one $600 million loan, I am not sure exactly, with only $100 million to cover it, and it looks like one bank is going to eat $500 million.

That is in just those two communities of Houston and Dallas. I know Houston has been the energy capital of this country for a long time, and you talk about the interest rates coming down. Well, the institutions are asking for 2 and 3 points in order to get a fixed 30-year loan at 10 percent or a little bit less.

Are they in the potential problem of savings and loans when they had long-term fixed rate loans and the interest rate was going up so much higher that they found themselves in a sticky position? Are the lending institutions getting into that same posture now?

Dr. ORTNER. I do not think so in the aggregate. My impression is that the commercial banks have tried to keep their term loans to a relatively short period, and that they do not have in their portfolios a large share of very long-term loans, as the savings institutions did, through their 25- and 30-year mortgages.

The banks that make the commercial loans do make them for terms, but these term periods, if they are not very short-term loans, might be 5 to 7 or 8 years typically. They usually do not go out much beyond that.

Senator FORD. What credence then should be put into the stories we see in the paper where it takes 120 days to 180 days maybe to get loans completed when they are refinancing their homes? That is not over a short period of time. Is that basically savings institutions? It is not commercial banks?

Dr. ORTNER. Yes. The mortgage lending by savings institutions tends to be a very large part of their total loan portfolios. In the case of commercial banks, it tends to be a much smaller portion.

Senator FORD. But it is still a lot of money.

Dr. ORTNER. Yes, sir.

Senator FORD. Commercial banks normally have more money than mortgage institutions, generally speaking.

Dr. ORTNER. Yes.

Senator FORD. You said that interest rates would go down, and that OPEC and the oil-producing countries with the low price of oil could be in some financial trouble. Do you expect those particular OPEC countries to withdraw their money from this country that they have had here because of the high interest rate?

Dr. ORTNER. Well, the dollar has come down substantially, and I assume that this is evidence that some foreign investors are already selling dollar assets, trying to repatriate funds.

Senator FORD. When they repatriate, are they buying gold?

Dr. ORTNER. I do not know at this point. We do not have up-to-date data. We will have this information from the Federal Reserve Board and the Treasury Department in the future, but exactly which assets they are selling and which assets they are buying this year or the latter part of last year we will not know for some time.

I do not know what portion of money they are putting into gold. The price of gold has not gone up very much. The strength in world assets seems to be in other currencies, and I assume there is some shifting into yen and deutsch marks, Swiss francs, and currencies like that.

Senator FORD. Is it still a policy of the OPEC countries to be paid for their crude and products in dollars?

Dr. ORTNER. Yes, sir.

Senator FORD. They had always told me to buy low and sell high. I think that is a pretty good philosophy. But the administration has said we are going to stop purchasing any oil for the strategic petroleum reserve. Zilch. We are not going to buy another drop.

Would that be good economic sense, with the price of oil down around $10, to just stop buying it when crude becomes so low in price? You know and I know that at some point the OPEC countries are going to turn the spigot off. Should we stop purchasing oil for the strategic petroleum reserve? Or should be continue to buy as we have in the past?

Dr. ORTNER. Well, Senator, I was not aware that our purchases for the strategic reserve were for the purpose of speculating on the price of oil. I understood that we were buying a certain amount of oil so that we would have on hand a supply that would take care of the country for 60 or 90 days.

Senator FORD You are absolutely right, but why buy it at $35 when you can get it at $10? Why do you quit buying when it goes down to $10?

Dr. ORTNER. My understanding is that we had purchased enough oil. I certainly agree with you that if we are going to buy it, we ought to buy it low and then sell it high. I certainly cannot disagree with that, and we would have been better off buying it at $10 than at $35. But when we were buying it in the high $20's and $30's per barrel, there was a good deal of fear that this price would continue to spiral upward and we needed to have some on hand to protect the country against other further massive increases in prices.

Senator FORD. Well, if the OPEC oil companies turn the spigot off, they are sending, as you probably know, products to each coast, east and west, and gasoline on the shore much cheaper than we can refine it here, and our refineries are being closed and mothballed, and after 6 months you cannot start them up again.

We have not built a refinery in two decades. You will have to admit that rigs are being mothballed; that they are cutting them up for scrap in various locations around the country. It will take us at least 6 years to get back into production. You said that earlier, 4 to 6, and most of those in the industry take at least 6 to go out and find something and then to get it on line.

We know that we cannot get 5 million barrels of oil per day out of SPRO. It will be somewhere more like 2.5 to 3 million barrels per day. So we are getting to the position where even though the prices are looking good as it relates to other things, there is a down side as it relates to the increased purchase of big cars. You find that one of our major automobile makers in this country is now going back to the big automobile and the rear drive. The Japanese are going to bigger automobiles. That is what is selling here.

I find ourselves going back to where our energy problems were with the exception of the buildings, home insulation, and that sort of thing. I find us going back to the days when we had real problems.

Do you feel that coming? Or are you satisfied that nothing like that will be coming down the path?

Dr. ORTNER. If, as I understand it, the cost of oil starting from scratch from new exploration and development in the future is going to be more than $10 a barrel and that is why we are cutting back now on new exploration and development, I think that the price of oil eventually will go back up to some extent. How much, obviously I do not know, but I would be concerned if I continued to see new exploration and development stopped and cut back as it is now.

I do not think we are going back, as I believe I suggested before, to the kind of wasteful consumption that we had in the 1960's and early 1970's. The larger cars that we are producing today get two or three times the gasoline mileage—it is my understanding, anyway—than the older large cars used to get.

Senator FORD. I am well aware of that.

Dr. ORTNER. I think that people generally realize that oil prices will not continue to come down and are more likely to turn back up eventually. I think that they will continue to be cautious in that regard.

Senator FORD. Well, is it true that you head the Office of the Chief Economist?

Dr. ORTNER. Yes, sir. I am currently the Chief Economist for the Department of Commerce.

Senator FORD. Are you requested by the administration at any time to give them your views on the privatizing of the Federal Government? Do you have any input into that proposal at all?

Dr. ORTNER. If these questions arise before the economic policy council meetings or the Cabinet meetings, I might be requested to provide a background memorandum to Secretary Baldrige for his

participation in these deliberations. That question, that issue is not my direct responsibility within the administration.

Senator FORD. Well, have you been asked that question by Secretary Baldrige?

Dr. ORTNER. Yes.

Senator FORD. What was your answer, or is that privileged?

Dr. ORTNER. Well, the general philosophy of the administration is to—forgive the use of that word, Secretary Baldrige does not like to make verbs out of nouns—but to privatize operations.

Senator FORD. That sounds good to a Kentuckian. Go ahead.

Dr. ORTNER. Well, I fear he may read this and call me up and criticize me for the use of the word in that context——

Senator FORD. Well, if that is all the criticism you get, you are lucky.

Dr. ORTNER. But it is the philosophy of the administration to privatize operations where it is found that the private sector of the economy can do a better job than government in particular operations, and I would agree with that.

We have this issue before us now in the Commerce Department concerning the NTIS, and this question is being reviewed, and a report will be prepared which should be ready later this summer, which we will share with you, as I said earlier.

Senator FORD. For the record, give me what NTIS means.

Dr. ORTNER. The National Technical Information Service.

Senator FORD. Fine.

Your recommendation is just a general recommendation that it is better for government to sell off where business can do better, and better for government to keep where government can do better? Is that your general recommendation to the Secretary?

Dr. ORTNER. Generally speaking, yes, sir.

Senator FORD. What about TVA? Do you think that ought to be sold?

Dr. ORTNER. I honestly cannot comment on that. I have never studied that issue, and I do not have a position on that.

Senator FORD. What about Bonneville Power?

Dr. ORTNER. I would say the same thing.

Senator FORD. The Northeast, Southwest, Southeast Power Commissions, you have no position on that at all?

Dr. ORTNER. I do not. If you would like me to comment on it, I would appreciate the opportunity to look into it.

Senator FORD. From what you have been saying, Doctor, I would be afraid to ask you to give me your recommendations. I am afraid you would want to get rid of all these.

Dr. ORTNER. Well, no, sir. I mean these have been important developments, and they are special circumstances, and I could not say at this point whether that would be my position.

Senator FORD. Doctor, I would like for you then to give to me for the use of this committee your opinion as it relates to TVA and the Land Between the Lakes property that this administration apparently wants to close and eventually sell. So I would like for that to be put together for me. I also would like to ask you to give me your impression as it relates to research and development for new technologies regarding coal and acid rain, particularly as it relates to the Drew Lewis paper that the President apparently has supported

with the Prime Minister of Canada. And if it is best to use that $5 billion as Mr. Lewis proposes, or is it best to spend money for research and development for new technologies. I would like to have the answer to those two questions, if you could do that for me.

Dr. ORTNER. To submit them to you?

Senator FORD. Yes, sir. In writing, please, sir.

Dr. ORTNER. I will be happy to do that, sir.

Senator FORD. Mr. Chairman, I thank you for the opportunity to visit with the good doctor this morning.

Senator GORTON. Thank you, Senator Ford.

Thank you, Dr. Ortner. We appreciate your candor and your help. We are adjourned.

[Whereupon, at 11:22 a.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

PREHEARING QUESTIONS OF SENATOR GORTON AND THE ANSWERS

Question. The Administration has proposed to phase out the Office of Productivity, Techology and Innovation, which carries out statutory responsilibilities, including those dealing with federal technology policy, patent policy, metric conversion, and critical materials. Will you work with Congress to let us know how, specifically, Commerce will fulfill these responsibilities if OPTI is eliminated?

Answer. Yes, I will be happy to work with the Congress on this.

Question. Are you aware of the status of the study going on in the National Technical Information Service about transferring its functions to the private sector? Do you have any thoughts on the value of such a proposal? Do you have any plans to improve the way the Service disseminates information?

Answer. NTIS, along with staff from other Commerce elements, is conducting a study of alternatives for privatizing the NTIS operation. The study has just started, with completion expected near the end of the summer.

There is as yet no proposal. I expect that the study will result in the development of one or more proposals which I can review and evaluate. At this stage, I can't prejudge the value of privatization. I will have to wait until I see the specifics of what the study team will develop.

I am aware of some of things that NTIS has been doing to improve operations--increasing productivity, use of faster mail service, and testing optical disc technology. I'm also aware of things NTIS has in the works--providing improved communication and services for regular customers, highlighting high tech reports of special value to American business, acquiring special interest reports from Japan and other foreign sources, and providing small businesses with better information on the Federal and State resources available to help them develop successful, technology based products and services.

Question. The Standard Industrial Classification (SIC) codes are widely considered to be outdated. What steps, if any, do you believe should be taken to improve the codes and other industrial data? Can they be improved within tight budgets?

Answer. The revisions of the current SIC codes proposed by the Office of Management and Budget on February 14, 1986 – the first since 1972 – address many of the shortcomings of the current codes. After comment by industry and other interested parties, OMB will recommend revisions in the fall. The revised codes will be used by the Census Bureau for the 1987 economic and Agricultural Censuses. It is my understanding that both the Census Bureau and the Bureau of Economic analysis have made provision in their out-year budgets to incorporate the new codes. Singnificant changes in the structure of the economy are reflected in the proposed revisions, for example, in the refinement of codes for the computer industry, manufacturing of communication equipment, the electronics industry, and service industries like tourism, management consulting, and health services. Several other improvements in data, which I believe are desirable, include increasing the accuracy of merchandise trade statistics, broadening the coverage of service industries in our annual services survey, measuring international service industry transactions with unaffiliated foreigners, and improving construction statistics. The Department of Commerce is currently working with the Customs Service to speed up the flow of Customs data to the Census Bureau to increase the accuracy of the monthly merchandise trade statistics. The Census Bureau plans to expand the coverage of service industries in

both its annual survey and its benchmark 1987 Census of Service Industries, and is actively cooperating with private industry and governmental groups who are users of those data.

The Bureau of Economic Analysis is designing a questionnaire to measure international service industry transactions with unaffiliated foreigners, information which will be valuable in trade negotiations. This effort is supported by the USTR and ITA in Commerce. The Business Roundtable and the Bureau of the Census are collaborating in a study to improve construction statistics which are alleged to understate the amount of industrial construction. I am hopeful that meaningful progress in these areas can be made despite limited budgets.

PREHEARING QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS

Question. What have been your major activities during your years as Chief Economist of the Department of Commerce? What do you consider to be your major accomplishments?

Answer. My principal responsibilities as Chief Economist have been to advise the Secretary and other senior Departmental officials on current economic developments, the economic outlook, and on economic policy options before the Cabinet Councils and other Administration policy-making forums.

I am proud to have assisted the Secretary in expanding the role which the Commerce Department plays in economic analysis and policy. In the past four years, the Department, through my office, has formally participated in the Administration's economic forecasting group. We have also contributed to numerous Cabinet Council working groups which define and evaluate policy options for the Cabinet. In addition, I have expanded the Chief Economist's role in analyzing and interpreting the economic data released by the Department for the press and public. In my judgment, this has contributed to more informed public discussion of economic developments by interpreting monthly and quarterly reports in a broader economic context.

Question. What role does the Under Secretary for Economic Affairs play in making Departmental and Administration policy?

Answer. The Under Secretary serves as the Secretary's principal advisor on issues of economic policy, statistics, technology and competitiveness. This includes representing the Department of Commerce on the Cabinet Council working groups which define and evaluate policy options for the Cabinet; preparing policy analyses and recommendations on a wide range of economic issues for the Secretary in Cabinet debate; and advising the Secretary on the economic consequences of Departmental policy issues.

Question. Are you planning to make any major changes in personnel or policy within the offices reporting to the Under Secretary?

Answer. At this time, I have no plans to make personnel or policy changes.

Question. With what issues will you concern yourself in the near future?

Answer. I will be working on improving our statistical reporting system. I will also be working on issues which will promote our competitive position. These issues would include technology transfer and antitrust reform.

Question. What are your plans regarding the National Technical Information Service? In particular, what new initiatives if any, do you plan regarding the acquisition and translation of foreign technical documents? If the proposed Japanese Technical Literature Act (S1073) is enacted, will you take an active role in its implementation?

Answer. Some 20 percent of the NTIS collection is from foreign sources and we recently reached a milestone of 100 agreements with foreign cooperating agencies. Additionally we have reached an agreement with Germany's Fachinformationszentrum Energie Physik Mathematik (FIZ), which involves the mutual exchange of data bases which will allow participation in the International Science and Technology Network (STN). We plan to build on this foreign technology base through partnerships with U.S. private sector organizations and foreign cooperating agencies.

During 1985, NTIS acquired over 1,200 new Japanese technical reports bringing the Japanese-source collection to over 5,000 reports. Also, NTIS recently reached agreement with the Japan Information Center for Science and Technology to make eight Japanese science and technology data bases available on line in the U.S. Two of these data bases will be available partially in English by October, and the English language contect will increase progressively thereafter.

The accomplishments last year are the result of almost 10 years of NTIS' persistent efforts in bringing Japanese technical information to the U.S. This year, NTIS will be spending a quarter of a million dollars to continue these efforts. I think this

is the way to proceed. All of the recent research into Japanese business style points to this kind of persistent, good faith, non-flashy if you will, effort as the most likely to succeed.

The Administration has suggested some revisions in S1073, currently under consideration by the House as HR3831. The Department generally supports the objectives of this legislation, and I would expect that NTIS, given its 10 years of experience in this area, would play a major role in the implementation of any bill eventually enacted into law.

Question. The Administration's FY 1987 budget request includes $750,000 "to reimburse the Internal Revenue Service (IRS) for improvements in the annual tabulations of corporate tax return data." Why it is necessary to make these imporvements now, and why are they not funded through the IRS's budget? Will this be a one-time expenditure, or will this expenditure continue into future fiscal years?

Answer. The IRS corporate tax returns tabulations are essential to the preparation of the GNP. They are a major source for components of the GNP accounts. In a 1982 report, the General Accounting Office stated that the BEA should make recommendations to improve the GNP estimates. Among other recommendations the BEA proposed that corporate tax tabulations be updated. Because these data are in addition to the needs of the IRS, the Treasury Department requires the BEA to reimburse it. The need for this information will continue in the future; therefore the expediture will continue in future years.

Question. The Administration's FY 1987 budget request proposes to eliminate all Productivity, Technology and Innovation programs. The reason given is that this effort "has completed its mission and much of the work can be provided through other Government agencies and through private sector, advisory groups".

Which specific aspects of OPTI's mission do you consider "completed" and which not? Which work, including statutory duties, do you believe can be provided through other Government agencies and private groups, and which not? Which specific agencies and private groups have the capability and resources to handle these functions? Have they agreed to handle these functions?

Answer. OPTI has completed its mission based on the following accomplishments:

Private sector acceptance of the Research and Development Limited Partnership vehicle to fund R&D (about $3 billion so far in private sector funding using RDLP's);

Removal of barriers to commercialization of federally-funded R&D, e.g.

P.L. 96-517 which grants to small business and not-for-profit contractors and grantees title to the inventions they make with Federal funding;

P.L. 98-620 which extends that policy to most government-owned, contractor-operated laboratories;

Legislation which has been introduced which will substantially increase private sector collaboration with federal laboratories; and

Removal of a major antitrust barries--PL. 98-462 (The National Cooperative Research Act of 1984) which eases the application of our antitrust laws to cooperative R&D consortia.

Development of a model agreement to use in developing binational research and development ventures.

OPTI's major job has been to remove barriers to expanded efforts by the private sector and by State and local governments to increase innovation. Now that those barriers have been removed, it is no longer necessary to have a continuing initiator role performed by the Federal government.

For example, the financial community now takes the lead in R&D limited partnerships, which partially is the result of OPTI's catalytic efforts having been implemented. The State and local governments, together with academia, are taking a lead role in promoting entrepreneurship. The Federal contract laboratories are now working under increasingly liberal rules for transferring Federal technology. The private sector is now more free to initiate cooperative R&D consortia, thanks to the new antitrust rules. Remaining functions which can continue without OPTI's assistance are:

Advocacy of the process of innovation as a critical element of national economic policy;

Promotion or further development of certain innovative models, such as shared flexible manufacturing; new private R&D financing techniques; and technology-based joint venture arrangements between U.S. and foreign firms;

On-going activities, associated with the Stevenson-Wydler Technology Innovation Act of 1980 (P.L. 96-480) such as the National Technology Medal;

Certain monitoring, regulatory, and training functions in connection with the commercialization of federally funded technology; and

Metric conversion coordination for Federal agencies.

In 1988, a small executive staff would continue serving as the Department's focal point for strengthening the contribution of technological innovation to U.S. competitiveness, economic growth, and new job formation.

Future activities expected to continue within these resources would be to serve as the Department's advocate on policy matters involving productivity, technology, and innovation, and domestic and international cooperative R&D ventures.

Additionally, the Department will continue to promote transfer of Federal technology through NTIS, which disseminates technical information produced by Federal labs, the patent licensing program, and the Center for the Utilization of Federal Technology, which informs industry about Federal technology with commercial potential.

We have not approached any private group or agency concerning the transfer of any of OPTI's functions.

QUESTIONS OF SENATOR FORD AND THE ANSWERS

Question. Your general philosophy is to let the Government do what it is best able to do and let private enterprise do what it does best. As an economist, do you think that it is a good idea to privatize the Tennessee Valley Authority, including the Land between the Lakes?

Answer. As an economist, I think that whaterver the Administration and the Congress can agree to do together to lower the Federal budget deficit is a good thing.

The Administration is not, however, proposing to privatize the power generating portions of the Tennessee Valley Authority. Its budget proposal would allow the States or private entities to maintain the community development and the recreational portions at TVA, including the Land between the Lakes.

The Administration's proposed budget is designed to encourage both the Congress and the TVA to explore cost saving measures.

Question. It is my understanding that the President has endorsed a $5 billion program for acid rain clean up. Would this money be better spent for research into cleaner ways to burn coal?

Answer. The President has endorsed a report by Drew Lewis which calls for a program of matching funds from the Federal government and private industry to provide incentives to install currently existing technologies for cleaner burning of coal.

However, it is important that both a clean up and a research effort be conducted simultaneously. Additional research monies are being spent by the Department of Energy in their fossil fuel research programs and by the Environmental Protection Agency in its Limestone Injection Multistage Burner program.

In addition, we would be willing to have our Office of Productivity, Technology and Innovation examine the problem if the Senator should request us to do so.

STATEMENT OF HON. JIM COURTER, U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, on March 10, 1986 the President nominated Bob Ortner to be Under Secretary for Economic Affairs at the Department of Commerce. I heartily concur in the President's recommendation to the Senate.

I've known Bob for a number of years both as the Chief Economist at the Department of Commerce and as a constituent of mine when I represented Short Hills, New Jersey in the Congress.

Bob Ortner comes to the position of Under Secretary from a unique background.

He has served as the Chief Economist for the Department of Commerce for the past five years. Prior to holding that position, Bob served as the Senior Vice President and Chief Economist for the Bank of New York from 1965 to 1981 enduring the rigors of daily commuting into Manhattan from New Jersey.

Bob obtained his Master's and Ph.D. degrees from Columbia University and received his Bachelor's degree from the Wharton School at the University of Pennsylvania. He has also taught statistics, economics, and finance at the latter institution.

I am pleased that the President has recognized the fine qualifications of my fellow New Jerseyan. I hope that the Senate will concur in his decision.

PATRICIA DIAZ DENNIS TO BE COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

WEDNESDAY, APRIL 9, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 2:45 p.m., in room 253, Russell Senate Office Building, Hon. Barry Goldwater presiding.

Staff members assigned to this hearing: Macky Ayers and Dale Brown, professional staff members; Tom Cohen, minority staff counsel.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON [presiding]. In the temporary absence of Senator Goldwater, I will open this hearing because we have here our distinguished colleague, Senator Bingaman, who would like to introduce the nominee.

After Senator Bingaman's statement, we will include the very fine statement on her behalf from Senator Wilson. Senator Bingaman.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Thank you very much, Mr. Chairman. Let me say that I am honored to be here today to present to the committee the nomination of Patricia Diaz Dennis to be Commissioner with the Federal Communications Commission.

She is here today with her husband Michael, her daughter Ashley, and her son Geoffrey. Mrs. Dennis is uniquely qualified as an FCC Commissioner. And I know she will perform this job very well. She is a native of my home State of New Mexico. Her parents live there now. She has been a credit to our State and to her hometown of Santa Rita and Silver City, which is my hometown.

We are very proud of her accomplishments. She is a highly skilled attorney with a wealth of professional experience, particularly in the public sector. And I think that will be welcome at the FCC. Most recently she has served with distinction as a member of the National Labor Relations Board where she has gained the respect of her colleagues and those who deal with the NLRB. She has done a thorough job, and I know she will bring those same attributes to the FCC.

Of equal importance to her skills as a lawyer and her legal qualifications, I want to mention her outside activities. Mrs. Dennis has

been very active in the Hispanic Bar Associations both here and in California. She was a member of the U.S. delegation to the United Nations World Conference on Women in Kenya in 1985.

She serves on the board of directors of the National Network of Hispanic Women. And she was selected by the Mexican American Opportunity Foundation to receive its 1984 Woman of the Year Award.

I believe Mrs. Dennis is an excellent choice to succeed another fine New Mexican who vacated the position she will be taking, and that is Henry Rivera. Henry, I believe, set a fine example of fairness and hard work on the Commission. Mrs. Dennis has assured me that she will bring the same open mind, willingness to work hard and listen to this important position.

I thank the administration for selecting her. And I encourage this committee to confirm her and to recommend her confirmation to the entire Senate.

[The statements follow:]

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Mr. Chairman, I am most pleased to be here today to support of the nomination of Patricia Diaz Dennis to be a Commissioner with the Federal Communications Commission.

Mrs. Dennis is uniquely qualified to be an FCC Commissioner and I know she will perform the job well. As a native New Mexican, she has been a credit to the state and her hometown of Santa Rita. We are proud of her accomplishments.

Mrs. Dennis is a highly skilled attorney with a wealth of professional experience especially in the public sector and will be a welcome addition to the FCC. Most recently she has served with distinction as a member of the National Labor Relations Board where she has gained the respect of ther colleagues and those who deal with the NLRB. She has done this through her insight and hardwork. I know she will bring those same attributes to the FCC.

Her skills as an arbitrator, bargainer, and negotiater will be put to good use as she tries to deal with the complex, ever-changing telecommunications industry. The challenges she is about to face put her on the cutting edge of deciding where this industry will be heading in the future.

Of equal importance with her legal qualifications is what she has done out-side the job. Mrs. Dennis has been extremely active with the Hispanic Bar Associations both here and in California; was a member of the United States Delegation to the United Nations World Conference on Women in Nairobi, Kenya, in 1985; serves on the Board of Directors of the National Network of Hispanic Women; and was selected by the Mexican American Opportunity Foundantion to receive their 1984 Women of the Year Award.

I am sure Mrs. Dennis will draw upon all these expereinces and skills in performing her obligations on the FCC. I know she will be an effective voice, as she works with the other Commissioners. She has already demonstrated her ability to work with all concerned parties.

I believe Mrs. Dennis is an excellent choice to succeed another fine New Mexican, Henry Rivera. Henry has set a fine example by his fair mindedness and hard work, and Mrs. Dennis has assured me that she will be bringing and open mind, a willingness to listen, and a desire to learn about a very complex industry.

Mr. Chairman, I want to thank the Administration for selecting Mrs. Dennis to serve on the FCC. I encourage her confirmation by the Committee and the entire Senate.

STATEMENT OF HON. PETE WILSON, U.S. SENATOR FROM CALIFORNIA

Mr. Chairman and members of the Committee, I am pleased that the Committee has scheduled this early hearing on the President's nomination of Patricia Diaz Dennis to be a member of the Federal Communications Commission. I regret that an unavoidable schedule conflict prevents me from appearing before you to enjoy in person the privilege of introducing Mrs. Dennis to the Committee. I commend the

President for making this selection, and further, I commend Mrs. Dennis for her willingness to serve at a time of particularly great challenges for the FCC.

Born in New Mexico, Mrs. Dennis earned her bachelor's degree at UCLA, and her law degree at Loyola University of Los Angeles, where she was Executive Editor of the law review.

She received the highest grade in her torts class at Loyola. Perhaps before she begins her work at the Commission, she might help us enact some sorely needed tort reform legislation.

Upon graduating law school, Mrs. Dennis became an associate at the prestigious Los Angeles firm of Paul, Hastings, Janofsky & Walker, specializing in labor relations. From there, she moved on to Pacific Lighting Corporation. Next, she worked in Los Angeles for the American Broadcasting Company.

Since May 1983, she has been a member of the National Labor Relations Board. While at the Board, she has established an outstanding reputation for her intellect, her dedication, and her sense of fairness—all of which are important attributes for anyone called on to serve at the NLRB or the FCC.

As the Committee's review of Mrs. Dennis' resume will show, she has been active in a number of off-the-job endeavors. For instance, she was a member of the U.S. delegation to the 1985 World Conference on Women, has served on the Lawyer Advisory Committee of the CORO Foundation Hispanic Leadership Program, and has taken a leardership position in a number of Bar activities.

By character and professional training, by performance and experience, Mrs. Dennis is admirably equipped to render valuable public service as a member of the Commission in its vitally important work for the American people.

As the Chairman knows, I have a great and continuing interest in the work of the FCC as it grapples with issues of great public importance. The Commission must sort through the problems created by the break up of ATT, making sure that our country maintains quality, affordable telephone service. It must balance competing claims to a finite radio spectrum, recognizing the needs of the public—particularly to effective police, fire, and rescue services. And the Commission must regularly review developments in the broadcasting field to assure that the public is well served by the various television services. This is particularly important in light of the inherent advantage that accrues to anyone granted a broadcast license, as well as the power that any service may attain by reason of it being the only outlet in town. Concentration of power in any sector of the television industry must not be allowed to go unchecked, for those who control our electronic media outlets are maintaining a public trust.

Mr. Chairman, as I noted at the outset of my statement, these are challenging times for the FCC. I have great faith that the nominee is more than qualified to meet the challenges.

I want to express my strong support for Patricia Diaz Dennis, and I urge the Committee to move her nomination expeditiously to the full Senate.

Senator GORTON. Senator Bingaman, thank you. That was a ringing endorsement which we are delighted to have. Again, in the interest of time, Mrs. Dennis, would you like to make your opening statement now?

I will include your biographical sketch in the record at this time.

[The biographical sketch follows:]

A. BIOGRAPHICAL DATA

1. Name: Dennis (Last) Patricia (First) Diaz (Other)

Address: 1175 Huntover Court (Current residence) 1717 Pennsylvania Ave., N.W. (Business)

McLean, VA 22102 Washington, D.C. 20570

2. Position to which nominated: Member of the Federal Communications Commission — Date of nomination: March 12, 1986

3. Date of birth: October 2, 1946 (month) (day) (year) — Place of birth: Santa Rita, New Mexico

4. Marital status: Married — Full name of Spouse: Michael John Dennis

5. Names and ages of children: Ashley Elizabeth Dennis — 11 years old

Geoffrey Diaz Dennis — 8 years old

Alicia Sarah Diaz Dennis — 1½ years old

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
San Francisco College for Women	9/65-6/67	N/A	N/A
University of North Carolina at Chapel Hill	9/67-6/68	N/A	N/A
University of California at Los Angeles	1/69-12/69	A.B.	6/70
Loyola University of Los Angeles School of Law	8/70-5/73	J.D.	6/73

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
5/5/83	Present	National Labor Relations Board	1717 Pennsylvania Ave., N.W. Washington, D.C. 20570	Board Member - Decisions pursuant to the National Labor Relations Act
7/79	5/4/83	American Broadcasting Co. Labor Relations & Legal Affairs - West Coast	4151 Prospect Ave. Hollywood, CA 90027	Assistant General Attorney - General Labor Law & General Legal work
6/78	7/79	American Broadcasting Co. Labor Relations & Legal Affairs - West Coast	4151 Prospect Ave. Hollywood, CA 90027	Attorney - General Labor Law & General Legal work
10/76	5/78	Pacific Lighting Corp.	810 S. Flower St. Los Angeles, CA 90017	Attorney - General Labor Law
8/73	10/76	Paul, Hastings, Janofsky & Walker	555 S. Flower St. 22nd Floor Los Angeles, CA 90071	Associate Attorney - General Labor Law, Litigation
5/72	8/72	Paul, Hastings, Janofsky & Walker	510 S. Spring St. Los Angeles, CA 90013	Summer Associate - research, memorandum writing, drafting of legal documents in all four firm departments (Corporate, Tax, Litigation, and Labor)
5/71	8/72	California Rural Legal Assistance	333 Perkins Ave. McFarland, CA	Summer Law Clerk - assisting in intake & in interviewing of legal aid clients; legal research & drafting of legal documents

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

5/83 - present: National Labor Relations Board, Board Member

1717 Pennsylvania Ave., N.W., Washington, D.C. 20570

STATEMENT OF PATRICIA DIAZ DENNIS

Mrs. DENNIS. Thank you very much, Senator Gorton. Mr. Chairman, members of the committee, I am pleased to appear before you today on my nomination by President Reagan to serve as a Commissioner of the Federal Communications Commission.

This second nomination with which the President has honored me provides both an opportunity and a responsibility—an opportunity to serve the American people in a different agency and a responsibility to assure that the decisions I will make as a Commissioner are in their interest.

While I have much to learn, I am confident that I can fulfill my duties at the FCC and I look forward to learning more about telecommunications. If confirmed, I will address issues at the FCC in a fair, open-minded and impartial manner just as I strive to do in my current position as a member of the National Labor Relations Board.

My overall philosophy, which I have applied at the National Labor Relations Board, will continue to be to limit governmental regulation to that appropriate to achieve the statutory goals. In this manner, the intended beneficiaries of the regulation can participate in determining for themselves what is in their own best interests.

Regulatory agencies, I believe, should clearly and fully state the rules by which they make their decisions so that the affected parties can be guided in their future actions to regulate themselves, without the uncertainty and inefficiency caused by ad hoc regulatory interference.

I believe that these principles which guide my decisionmaking at the NLRB have general application to issues which will come before me, if confirmed, at the FCC.

My starting point, however, will be the Communications Act itself, which mandates that the Commission:

> Make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide and worldwide wire and radio communication service with adequate facilities at reasonable charges.

I will further adhere to the act's requirement that the Commission promote the "public interest, convenience, and necessity." I intend to work with my colleagues at the Commission and with the Congress to achieve these ends.

I thank you for this opportunity to appear before you, and I am ready to answer any questions you may have.

Senator GORTON. Mrs. Dennis, I believe at this point I am going to recess the hearing. Senator Goldwater is the chairman of the subcommittee, and I hope that he will be here momentarily I think that I should defer at least the initial questioning to him.

So for the time being the committee will stand in recess.

Mrs. DENNIS. Thank you, Senator.

[Brief recess.]

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. The hearing will come back to order. I apologize for not having been here on time, but we are trying to figure out some way to not cut the pensions of military people. And

being a retired military person, I get a little touchy about that myself.

I understand that you have been introduced and you have made your opening statement.

I am pleased to welcome you here this afternoon as the full committee convenes the nomination hearing of Patricia Diaz Dennis, President Reagan's choice to be a member of the Federal Communications Commission, succeeding Henry M. Rivera, who has resigned.

Mrs. Dennis, who has served as a Board member of the National Labor Relations Board with distinction, from 1983 to the present time, also spent a number of years with the American Broadcasting Co. working in the area of labor law.

I see from your biographical data that you were born and raised in one of our Nation's most beautiful States, New Mexico, and I take great pleasure in welcoming a fellow westerner to both this meeting and to what I am sure will be a long and most distinguished career at the Federal Communications Commission.

Mrs. DENNIS. Yes, I have, Mr. Chairman.

Senator GOLDWATER. I have looked into your background and I find nothing in the world that I could hold against you.

Mrs. DENNIS. That is encouraging.

Senator GOLDWATER. Anybody who would want to move out of the Southwest and come back to this God awful place might be looked at, but you are going to fill a very important job so I will just say, without the presence of any members of the subcommittee here, you will be approved.

Mrs. DENNIS. That is it?

Senator GOLDWATER. That is all there is to it, and I want to congratulate you. I look forward to working with you because I am a communicator myself, and I have a great affection for it. That is all I have unless you have something you want to add.

Mrs. DENNIS. Absolutely not, Senator.

Senator GOLDWATER. The meeting will be adjourned.

[Thereupon, at 2:55 p.m., the committee adjourned, subject to the call of the Chair.]

POSTHEARING QUESTIONS OF SENATOR GOLDWATER AND THE ANSWERS

Question. Many telephone customers and rural telephone companies are concerned that the FCC may allow AT&T to reprice its services to make high density routes less expensive and low density routes more expensive. What are your views regarding the possibility of such "geographic deaveraging?"

Answer. I understand that the FCC is currently committed to continuing its policy against geographic deaveraging of AT&T's long-distance telephone rates. Because AT&T's basic services are subject to regulation, any dfeaveraging would have to be reviewed by the Commission after publicv comment. Were I to be confirmed, I would carefully review any AT&T geographic deaveraging proposal to determine whether a change in Commission's policy would be in the public interest.

Question. Do you think that the Commission should have the power to, and I hesitate to use this word, regulate, the content of television? I ask this question because I continue to feel that by and large what the networks sell is not in the best interest of America and her citizens.

Answer. Whether the Commission should have the power to regulate the content of television is a very complex question. Because it raises significant constitutional issues as well as issues under the Communications Act, I believe the Commission should proceed cautiously with any regulation affecting freedom of speech. The

Commission must give due weight to First Amendment rights, as defined by the courts, in making its public interest determination.

Question. Do you think that the FCC should continue to scrutinize carefully the rates and conditions of services offered by all the dominant telephone companies—local and long distance?

Answer. Yes, the FCC should continue to carefully scrutinize rates and services of dominant telephone common carries so long as they remain dominant in any particular market. "Dominant" carriers, by definition, have the ability to control prices and services without fear of a competitive response. The Commission should carefully review the rates and conditions of service of dominant carriers to ensure that they do not abuse their market power.

Question. Please discuss briefly your qualification to be an FCC Commissioner.

Answer. My qualifications to serve as an FCC Commissioner derive principally from my legal education and my private and public sector work experience. As a practicing attorney for ten years before my appointment to the National Labor Relations Board in 1983, I developed and honed analytical skills learned in law school. My five years working at American Broadcasting Company gave me an understanding of the radio and television broadcasting industry. The labor and general legal issues I handled often required me to understand technical aspects of broadcasting, and I was exposed to certain FCC-related issues, as well. My three-year record as a Member of the NLRB demonstrates that I can decide and process a large volume of matters (approximately 1500 contested cases a year) and that, in doing so, I can balance the competing interest of the parties and the public in a fair, impartial, and evenhanded manner. My experience at this independent regulatory agency has also given me an understanding of the function and place of such agencies within our federal government. In addition to my education and work experience, I would also bring to the FCC certain personal attributes which, I believe, are critical to the fulfillment of any position of public trust—strong ethics, a gut sense of fairness, a principled approach to decisionmaking, basic common sense, and (last, but not least) a sense of humor.

Question. There has been a great deal of dicussion lately about international trade in telecommunications equipment. How do you view the FCC's role in the international trade area?

Answer. The Commission's role in international trade in telecommunications equipment is limited. I understand that bills are currently pending in Congress to give the Commission more of a role and, of course, if any are enacted, I would fully comply with their mandate. In the meantime, I believe the Commission can continue to aid in promoting international free trade in telecommunications equipment by providing technical and procedural information to assist the Congress and U.S. trade officials.

Question. Would you take a moment to describe your regulatory philosophy?

Answer. My regulatory philosophy, in general, and regarding the FCC, in particular, is that the beginning point must be the statutory mandate of the agency. The Communications Act directs that the FCC promote the public interest. Because I believe that the American public can best determine for themselves what is in their interest, regulation by a strong and competitive market, where possible, is the preferred method to ensure that the public interest is served. Regulatory intervention is necessary when the public interest will not or cannot be protected by market forces.

Question. The telecommunications industry is in a transition period—we are moving toward competition and away from a regulated monopoly. Very briefly, please tell me what sort of regulation of AT&T is appropriate during this transition period? At which point do you think it would be appropriate to deregulate AT&T?

Answer. During the transition period from a regulated monopoly toward competition, I believe that the Commission should continue to regulate AT&T as long as it is a dominant carrier. As competition grows and alternatives to AT&T's services develop, the Commission should reevaluate the continued utility of regulating AT&T's service offerings. If AT&T ceases to dominate a service market which can be insulated from the effects of its power in other regulated markets, the FCC should not necessarily continue to regulate AT&T's offerings in that specific market. The details of such an approach must necessarily emerge in response to changes on a market by market basis, so I cannot say exactly when it would be appropriate to deregulate in any market, let alone when AT&T as a whole could be entirely deregulated.

Question. In facing questions of economic efficiency versus the continuation of universal telephone service, don't you think that universal service must be given the highest priority?

Answer. Economic efficiency, avoiding unreasonable discrimination, and universal service are all in the public interest. The proper balance between these components of the public interest is difficult and delicate. I would strike it based on the evidence before me in each particular factual setting. I do believe, however, universal service is an extremely important goal and I would support it at the FCC.

Question. Do you think that in formulating its regulatory policies the FCC should consider the ability of American companies to compete internationally?

Answer. I support efforts to encourage American companies to compete in foreign markets. I do not think any unnecessary restrictions which hamper American companies' ability to compete internationally should be imposed. To what extent this may apply in specific proceedings at the FCC and how I would apply the principle, I cannot say until I am confronted with the situation.

POSTHEARING QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS

Question. What is your regulatory philosophy, and how does it apply to the government's oversight of the communications industry?

Answer. My regulatory philosophy, in general, and regarding the FCC, in particular, is that the beginning point must be the statutory mandate of the agency. The Communications Act directs that the FCC promote the public interest. Because I believe that the American public can best determine for themselves what is in their interest, regulation by a strong and competitive market, where possible, is the preferred method to ensure that the public interest is served. Regulatory intervention is necessary when the public interest will not or cannot be protected by market forces.

Question. What sectors of the communications industry do you see as fully competitive?

Answer. "Fully competitive" is a relative term which, based upon my current understanding of the communications industry, I cannot with assuredness use to describe any of the various sectors of the industry. I may be able to answer differently after I have had an opportunity to more fully study the industry and review each sector's competitiveness.

Question. How should the Commission go about allocating parts of the electromagnetic spectrum?

Answer. Allocation of the electromagnetic spectrum is among the most difficult tasks entrusted to the Commission because it is a limited valuable, natural resource, vital to all telecommunications services. The Commission has traditionally allocated portions of the spectrum through rule-making, which presents a forum for a full and thorough airing of all the issues before a decision is reached. I am not familiar with all the mechanisms by which the Commission allocates or may propose to allocate spectrum. Whatever approach the FCC undertakes, however, the result should maximize the public interest.

Question. Please give your views on the following subjects and the role the FCC should play in each area:

a. Fairness Doctrine/equal time rule.

Answer. The Fairness Doctrine and the Equal Time Rule affect the exercise of First Amendment rights. I believe the Commission should proceed cautiously with any regulation affecting freedom of speech. As the court have recognized, the public interest standard which guides the Commission necessarily invites reference to First Amendment principles. I am aware that the Commission has submitted a *Fairness Report* to Congress and that the constitutionality of the Fairness Doctrine is the subject of pending litigation before the U.S. Court of Appeals for the District of Columbia. Until I have an opportunity to carefully examine the record in the underlying FCC proceeding, I am not prepared to come to any conclusions about the Fairness Doctrine. Similarly, I cannot comment on the First Amendment implications of the Equal Time Rule until I have throughly examined the issue. Both the Fairness Doctrine and the Equal Time Rule are currently in effect. Absent some change in status, I fully intend to enforce both the statute and the Commission's rules embodying them.

Question. b. Children's television.

Answer. I am aware that the Commission has various policies regarding children's television and advertising practices. While I have not yet had an opportunity to thoroughly review these policies, I understand that broadcasters have a general obligation to meet the needs of the community through their programming and that the "community" includes children. I believe, generally, parents bear the ultimate responsibility to determine what their children watch. I confirmed, I fully intend to

examine in detail issues concerning children's programming as they arise and resolve them on the evidence before me.

Question. c. Broadcast/cable ownership rules.

Answer. I understand that the broadcast and cable multiple ownership rules are premised on the two fundamental concepts of promoting diversity in media ownership and fostering economic competition. I firmly support both goals. Generally, I believe that, where the market is able to promote these goals, then economic incentive—not government regulation—should control. Until I have an opportunity to study more carefully the efficacy of each rule, I cannot address them more specifically.

Question. d. Encouragement of minority ownership of media.

Answer. I firmly support the Commission's policy of encouraging minority ownership of broadcasting media. I believe the FCC can also encourage minorities' acquiring broadcast properties by increasing the availability of information and educational opportunities and by facilitating capitalization.

Question. e. Public broadcasting.

Answer. I know that public broadcasting occupies a unique position in the broadcast industry, with channels specifically reserved for its use, and that provisions in the Communications Act have been enacted to increase and strengthen public broadcasting services. I understand also that issues have come before the FCC concerning the difficult question of funding for public broadcasting. I believe that public broadcasting warrants support and, if confirmed, will carefully review Commission policies as public broadcasting issues arise.

Question. f. Access charges.

Answer. Repricing the way users pay for long distance services is a complicated issue involving economic theory, the technological capabilities of the network, and ratemaking by the states and the FCC. The goals of the repricing plan—to promote an efficient network, avoid discrimination and uneconomic duplication of existing facilities, and promote universal service—are ones which I support. As to the specifics of the plan and issues of further implementation, I cannot comment until I have studied the record and reviewed the results to date.

Question. g. Universal telephone service.

Answer. The protection of universal service is a fundamental Commission objective, and one which I fully support. If confirmed, I will carefully monitor the effect of any proposed change to the FCC's regulatory structure to ensure universal service is not adversely affected.

Question. h. The Use of Structural Separations and Accounting Rules in Protecting Telephone Ratepayers and Further ing Competition.

Answer. The Commission uses structural separation as a mechanism to permit dominant telephone carriers to engage in unregulated competive activities, while protecting ratepayers from subsidizing these unregulated activities and protecting competition in the unregulated market. Where regulated carriers can contribute competitive vigor, I believe they whould be able to participate under conditions that protect ratepayers and further competition.

I understand the Commission is presently evaluating less burdensome alternative to structural separation. I will review the record closely to determine if the costs of this form of regulation can be minimized or eliminated through the use of accounting rules while at the same time protecting against anticompetitive abuse.

○